S. HRG. 113–338

S. 2132, INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF-DETERMINATION ACT AMENDMENTS OF 2014

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

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WEDNESDAY, APRIL 30, 2014

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:30 p.m. in room 628, Dirksen Senate Office Building, Hon. Jon Tester, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. JON TESTER, U.S. SENATOR FROM MONTANA

The CHAIRMAN. I will call the hearing on Indian energy development to order.

Today, the Committee will discuss S. 2132, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2014.

I am going to start by thanking Vice Chairman Barrasso for introducing this bill. I think we both recognize that energy development on tribal lands is one of the most promising areas of economic development in Indian country.

The Committee has received testimony numerous times regarding development of Indian energy resources. We have held oversight hearings and listening sessions. The Committee has also taken up similar bills in the last two Congresses. The former Chair of this Committee, Senator Byron Dorgan, introduced a bill in the 111th Congress. In the last Congress, Chairman Akaka and Vice Chair Barrasso co-sponsored the Indian Energy bill, S. 2132. This is a culmination of all of those discussions.

The last major congressional amendments regarding tribal energy resources were included in the Energy Policy Act of 2005. In that Act, Congress provided the Secretary of Interior the authority to enter into tribal energy resource agreements with tribes. These agreements would allow a tribe to manage their own energy resources without further Federal approval.

However, over the past decade no tribe has yet entered into a Tribal Energy Resource Agreement (TERA) with the Department. Meanwhile, development of tribal energy resources has continued to lag behind the development of other Federal or privately owned lands.

You would think the Federal Government's trust responsibilities toward tribes and tribal lands would assist tribes in developing their resources. Instead, tribes have often claimed that development opportunities have been lost, specifically because of delays caused by the Federal Government to carry out its trust responsibility.

Legislation such as S. 2132, which we will discuss today, HEARTH Act, which was enacted in the last Congress, are intended to remove those bureaucratic hurdles by giving tribes direct management of their lands and their resources.

Our tribal witnesses today will provide testimony on all types of energy from conventional oil and gas to renewable resources such as solar, biomass and hydro. S. 2132 contains provisions that would affect all types of energy development as well as a section on allowing tribes to administer a federally funded weatherization program.

While I am not yet a co-sponsor of this bill, I am a big proponent of improving tribal energy development. I recognize that S. 2132 has widespread support from tribes and look forward to hearing from the Administration and tribal leaders today about this bill. In particular, I hope this hearing provides an opportunity to insure that we are not missing any other possible fixes that would further improve tribes' ability to develop their resources.

The CHAIRMAN. With that, I would ask Vice Chair Barrasso for his opening statement.

STATEMENT OF HON. JOHN BARRASSO,
U.S. SENATOR FROM WYOMING

Senator BARRASSO. Thank you, Mr. Chairman. I appreciate your kind words.

You are right, it was Senator Dorgan, when he was Chairman of the Committee, who brought this additional concern when he brought forth a map of his home State of North Dakota and we saw how difficult it was on tribal lands to use the many resources that were on those lands. That is why I continue to come back time and time again, so I want to thank you for holding this hearing today on my bill, S. 2132, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2014.

I introduced this bill on March 13 and am joined by Senators McCain, Hoeven, Murkowski, Thune, and Enzi as co-sponsors. The bill is largely similar to S. 1684 which I introduced in the last Congress and this Committee favorably approved. We continue to advance this measure again because energy development on tribal lands is undeniably important. It is a significant facilitator for jobs and economic growth in Indian country, and for all of America.

As reported by the National Congress of American Indians, tribal lands hold nearly one-quarter of all American onshore oil and gas reserves but they produce less than five percent of the domestic oil and gas supply. Tribes have called upon Congress and the Administration to assist in finding a way to tap into that potential.

The Energy Policy Act of 2005 attempted to do that through tribal energy resource agreements, TERAs, you referred to those, Mr. Chairman, between tribes and the Secretary of Interior. These agreements allow tribes to execute leases, business agreements and rights-of-way for energy development without further secretarial

approval. The agreements were intended to reduce bureaucracy and to increase access to energy development.

However, uncertainty in the review process for these agreements has prevented tribes from applying for any agreement. My bill is intended to address this uncertainty and other tribal recommendations in several key respects.

First, the legislation would streamline the approval process for tribal energy resource agreements on Indian lands. This bill would provide clear deadlines and requirements for approval or disapproval of the tribal application for the agreements. In addition, S. 2132 would allow tribes and third parties to perform mineral appraisals to expedite secretarial approval of tribal energy transactions.

Moreover, S. 2132 would also encourage the development of renewable energy resources by authorizing tribal biomass demonstration projects. In harvesting biomass materials, tribes could experience multiple benefits. These biomass projects would promote tribal forest health and economies, create jobs and reduce the risk of destructive wildfires.

Mr. Chairman, this legislation has been pending for quite some time and enjoys wide tribal support and is narrowly tailored in a way that provides procedural measures needed to kick start energy development.

Larger, substantive reforms for tribal energy development have not been included in this specific bill and certainly deserve consideration by Congress. However, that would require a more extensive debate and potentially involve multiple committees. Mr. Chairman, I want to continue to work with you on those initiatives in the future.

In the interim, I urge my colleagues to advance this legislation so it can be signed into law this year and tribes can move forward toward energy self-determination.

I want to welcome the witnesses and look forward to the testimony.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Vice Chairman Barrasso. I appreciate your testimony. I appreciate your leadership on this issue.

I want to welcome our first panel and would remind all the witnesses to limit their testimony to five minutes. This will allow Committee members enough time to ask questions. The full written statements will be made a part of the record.

Our first panel includes our Federal officials. From the Department of Interior we are going to hear from Kevin Washburn, Assistant Secretary, Indian Affairs. Kevin is a regular testifier here, almost on a monthly basis if not more. Welcome back, Kevin. We look forward to your testimony.

Then we will hear from Ms. Tracey LeBeau, Director, Office of Indian Energy Policy and Programs at the Department of Energy. She will talk about how S. 2132 would impact those agencies who assist tribes in developing their energy resources. Tracey, welcome to the Committee and look forward to your testimony as well.

With that, we will put five minutes on the clock and start with the Honorable Kevin Washburn.

STATEMENT OF HON. KEVIN WASHBURN, ASSISTANT SECRETARY—INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. WASHBURN. Thank you, Chairman and Vice Chairman for holding this hearing.

Vice Chairman, thank you for your consistent leadership in this area. You have been long focused on Indian energy and it has needed your focus of attention. We appreciate that.

S. 2132 has a lot that we really like in it. We are grateful you are considering doing something in this area. The 2005 Act has been relatively unsuccessful. That bill attempted to create self-governance and self-determination in this area but the tribes have not engaged with it really at all.

We do not have a single TERA that has been signed. That means something has gone wrong because we all know that things work better when self-determination and self-governance is the order of the day.

One of the issues about the 2005 Act that was problematic is the capacity determination. The bill was really prescriptive and really put us in a straightjacket about determining capacity of tribes. Frankly, determining the capacity of tribes to do something feels very much like a 20th Century concept to me.

We have sort of moved beyond that now with the HEARTH Act. In the HEARTH Act, we have to approve a tribe's regulations and once we have done so, and we can be confident they have a regulatory scheme in place, we can turn the whole program over to the tribe. We very much think that is a really good model.

I think that is the model we like and frankly, it is one the House has been comfortable with, the Senate has been comfortable with and the President enacted the HEARTH Act.

One of the big suggestions we have in my testimony is can we work with the existing model that we have all sort of agreed to in principle. That would largely be our suggestion.

That said, there is not a whole lot that we disagree with in this bill. We have raised a few things about which we have some concerns but I think that we have learned we should trust tribes. Tribes do better when we trust them to do these things. They are most concerned with doing these things right because they have to live on the lands about which we are talking.

We are all in favor of self-governance with regard to energy as we are in all things, so why don't I stop right there. I think that is sort of the basic bottom line.

We thank the Committee for giving attention to this important issue.

[The prepared statement of Mr. Washburn follows:]

PREPARED STATEMENT OF HON. KEVIN WASHBURN, ASSISTANT SECRETARY—INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Good afternoon Chairman Tester, Vice-Chairman Barrasso and Members of the Committee. My name is Kevin Washburn and I am the Assistant Secretary for Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to present testimony for the Department on S. 2132, the "Indian Tribal Energy Development and Self-Determination Act Amendments of 2014." S. 2132 is legislation to amend the Indian Tribal Energy Development and Self-Determination Act of 2005.

The Department believes that it is appropriate to consider amendments to Title V of the Energy Policy Act of 2005, relating to tribal energy resource agreements (TERAs). The Energy Policy Act sought to increase tribal self-governance over energy development. That Act authorized TERA which are designed to shift authority for the review, approval, and management of leases, business agreements, and rights-of-way for energy development on tribal lands from the Federal government to participating tribes. Sadly, however, the Energy Policy Act has not been successful. Indeed, since promulgation of the Department's TERA regulations in 2008, the Department has not received a single TERA application.

The Department supports the goal of increasing tribal self-governance in the area of energy and mineral development. The Department believes that environmentally responsible development of tribal energy resources is critical to the economic viability of many American Indian Tribes and to the sustainability of many Alaska Native villages. Energy and mineral development represents a near-term solution for many tribes to promote economic development, small business, capital investment, Indian-owned businesses, and job creation for tribal members. TERAs are designed to promote tribal sovereignty and economic self-sufficiency by establishing a process where tribes can assume a greater role in the development of their energy and mineral resources.

Key to a tribe's ultimate success under a TERA is its capacity to perform the functions and responsibilities outlined in a TERA—functions and responsibilities historically performed by the Department. Under existing law, the Department plays a critical role in determining a tribe's capacity to take on those functions. S. 2132 seeks among other things to simplify and expedite the TERA process. This is a laudable goal. While the Department supports this overall goal, the Department would like to work with the Committee to further improve S. 2132 as described below.

Implementation of the 2005 Amendments

As noted, the current TERA regime has not been successful. This is not for lack of effort by the Department. Under current regulations, a tribe can request a pre-application meeting with the Office of Indian Energy and Economic Development (OIEED) to discuss any regulatory or administrative activities it might wish to exercise through a TERA. These informal pre-application meetings include discussion of the required content of a TERA application, such as identifying the energy resources the tribe anticipates developing; what capacity, management, and regulation will be needed to develop the energy resource; and potential mechanisms for building the capacity and pursuing other activities related to the energy resource the tribe anticipates developing. Since 2008, the Department has met with six tribes who have considered entering into a TERA. Of these tribes, one had active oil and gas development occurring on its reservation and was considering a TERA for further oil and gas development. The other tribes were considering renewable energy resource development. We understand that several tribes with renewable energy resources have expressed an interest in developing a TERA.

The Department supports several of the provisions in S. 2132:

- Sec. 101(a)(1)(E), requiring consultation with each applicable Indian tribe before adopting or approving a well spacing program or plan applicable to the energy resources of that Indian tribe or the members of that Indian tribe. The Department notes, however, that this consultation requirement could slow the timeframe for adoption or approval of well spacing programs or plans.
- Sec. 101(a)(4)(B), promoting cooperation with the Department of Energy's Office of Indian Energy Policy and Programs in providing assistance to tribes in development of energy plans. (The Department also believes that cooperation with other federal agencies is important and has made efforts to accomplish such cooperation, through the White House Native American Affairs Council.)
- Sec. 102(1) that adds "tribal energy development organization" as an eligible entity for grants under this section.
- Sec. 102(2) that adds "tribal energy development organization" as an eligible entity for technical assistance from the Department or eligible for financial assistance to procure technical assistance.
- Sec. 103(a)(1) that adds "production" to "facility" and specifically includes a facility that produces electricity from renewable energy resources. Energy resources developed on lands owned by individual Indians in fee, trust, or restricted status as well as energy resources developed on land owned by any other persons or entities may be included in leases, business agreements, and rights-of-way a tribe or tribal energy development organization may approve as long as a portion of the energy resources have been developed on tribal land. The amendment also expands "facility to process or refine energy resources" to

specifically include renewable energy resources and to add energy resources that are "produced from," in addition to energy resources "developed on," tribal land. The amendment includes pooling, unitization, or communitization of the energy mineral resource(s) of the tribe with energy mineral resource(s) owned by individual Indians in fee, trust, or restricted status or owned by any other persons or entities.

- Sec. 103, which expands purposes for rights-of-way under a TERA beyond pipelines, electric transmission or distribution lines that serve electric generation, transmission or distribution facilities located on tribal land to include those lines that also serve an electric production facility or a facility located on tribal land that extracts, produces, processes, or refines energy resources (not necessarily produced on tribal land) and lines that serve the purposes of or facilitate the purposes of any lease or business agreement entered into for energy resource production on tribal land.
- Sec. 103, which expands the time period for Secretarial approval of a revised TERA from 60 days to 90 days.
- Sec. 103, which provides that a Tribal Energy Resource Agreement remains in effect until rescinded by the tribe or Secretarial re-assumption.
- Sec. 103, which declines to waive the sovereign immunity of tribes.
- The Department also supports the provision that amends 25 U.S.C. 415(e) to allow the Navajo Nation to approve its own leases for business or agricultural purposes for 99 years. The Department is, however, concerned about the extent of the showing needed for the tribe to engage in mineral development (exploration, extraction and development) without Secretarial approval, as discussed further below.
- The Department supports the proposed changes to the existing environmental review process for TERAs, but we suggest that the Committee consider addressing environmental review similar to the approach Congress utilized in the HEARTH Act. Both the Department and the Council on Environmental Quality supported the HEARTH Act approach and the Department generally supports a similar approach here.

As noted, the Department is concerned with some of the provisions of S. 2132. The Department's concerns include the following issues:

A. Allocation of Liability

We are concerned about a lack of clarity in S. 2132 in allocating liability for tribes that choose to utilize a TERA. According to its terms, the bill would amend 25 U.S.C. § 3504(e)(6) to state that nothing in the bill would change the liability of the Department for terms of any lease, business agreement, or right-of-way that is not a "negotiated term" or losses that are not the result of a "negotiated term." However, the definition of "negotiated term" does not clearly articulate how liability is allocated and the current language regarding the remaining trust responsibility does not provide sufficient clarity.

The Department believes that there is an easy fix to this problem. The Department recommends that the Committee replace the current and proposed amendment with the recently enacted liability provision in the HEARTH Act. This approach will clarify for both the Department and tribes the allocation of liability.

B. Determining "Capacity"

S. 2132 seeks to amend the statute's capacity requirement by providing that a tribe satisfies the capacity requirement if it has carried out a self-determination contract or compact "relating to the management of tribal land." We recommend that this approach be refined to ensure that the function performed pursuant to the self-determination contract or compact is appropriate given the broad array of functions that TERAs may implement.

The 2005 Act provides a framework under which tribal capacity includes not only managerial and technical capacity for developing energy resources (which necessarily includes realty, environmental, and oversight capabilities), but also managerial and technical capacity to account for energy production, experience in managing natural resources, and financial and administrative resources available for use by the tribe in implementing a TERA. Given the scope of functions that could be included in a TERA, successful administration of a self-governance contract or compact relating to the management of tribal lands may or may not be relevant to performing a particular TERA function.

For example, a self-governance contract for realty functions on a reservation largely devoted to grazing and residential use may not be indicative of regulating

the development of oil and gas extraction. We recommend an approach that relies on experience with specific duties and compliance activities to demonstrate capacity for specific functions the tribe wishes to undertake with a TERA. Certainly prior participation in 638 contracts/compacts for specific duties and compliance activities is an important factor, but depending on the specific functions to be undertaken by a tribe in a TERA, it may not be the only factor that should be considered.

Additionally, the Department recommends, as an alternative, the Committee consider streamlining or eliminating capacity determinations. Under existing law the Secretary is required to determine "that the Indian Tribe has demonstrated that the Indian Tribe has sufficient capacity to regulate the development of energy resources of the Indian tribe." To date, no tribe has applied for a TERA, so we have no data on how much effort a tribe must expend for a positive capacity determination for the realty, environmental, and oversight activities it may assume.

However, enactment of the HEARTH Act eliminates this determination for entire categories of energy production. Because the HEARTH Act applies to surface leasing, it is now much simpler for tribes to pursue wind, solar and biomass energy projects without Secretarial approval. The HEARTH Act's promotion of self-governance for surface leasing should be carried forward to mineral development. At a minimum, the Indian Energy Development and Self-Determination Act should be modified to limit TERAs to oil, gas, coal, geothermal, and other mineral-based energy projects, i.e., those that would require a lease under the Indian Mineral Leasing Act of 1938, a Minerals Agreement under the Indian Mineral Development Act of 1982, or a right-of-way under the Indian All Rights-of-Way Act of 1948.

If Congress maintains the capacity requirement because minerals are a limited and valuable resource, a TERA capacity determination could be based on whether the tribe contracts BIA realty functions in accordance with Pub.L. 93–638. Utilizing this approach would be a well-understood procedure for tribes, it would be useful to a tribe regardless of whether a TERA were ever obtained, and it is an important component to developing energy resources or entering into associated energy leases and rights-of-way.

As currently drafted, S. 2132 uses a similar standard (though not necessarily the contracting of BIA realty functions) as a "safe harbor" standard that would result in an automatic finding of tribal capacity. Successfully operating a 638 contract "relating to the management of tribal lands" for 3 years may not be, in and of itself, sufficient to demonstrate that the tribe involved is prepared to review, approve and manage leases, business agreements and rights-of-way for energy development. However, operating BIA's realty functions on tribal lands represents a component common to all energy development activities a tribe may want to undertake with a TERA. Amending the Indian Energy Development and Self-Determination Act to make this an explicit component of a favorable capacity determination would be clarify the requirement for applicant tribes and streamline the Department's review.

Tribal authority for approving tribal leases for residential and business purposes granted under the HEARTH Act may also serve as a clear capacity criterion for a Tribal Energy Resource Agreement under the Tribal Energy Development and Self-Determination Act of 2005. Such tribal authority is based on the tribe's submittal of, and the Secretary's approval of, tribal leasing regulations consistent with Departmental leasing regulations that also include environmental provisions for identification and evaluation of significant effects leasing may have on the environment and public notice and comment on the effects. While HEARTH Act authority for leasing does not require any capacity determination by the Secretary, tribes that have approved leasing regulations and have issued leases under that authority may be assumed to have both the structure (regulations) and the ability (personnel qualified to carry out the leasing functions) for basic leasing functions.

In addition, the tribal environmental regulations required under the HEARTH Act may form the basis for the environmental review process also required for a TERA under the ITEDSD Act. Other considerations for capacity for environmental review and compliance could include environmental personnel, experience of the Indian tribe in managing natural resources and financial and administrative resources available for use by the Indian tribe in implementing the approved tribal energy resource agreement of the Indian tribe. An amendment specifying tribal adoption of an environmental code that includes requirements under a TERA would provide clarity for a capacity determination.

We also believe that the proposed 120 day limit for the Department to determine capacity may not be adequate to comply with the notice requirement required by law. Currently, the Secretary must publish in the Federal Register a notice that a tribe has applied for a TERA with a copy of the TERA and request public comments. The process of seeking and considering public comments and to make appropriate changes in the TERA based on the public comments likely cannot be accomplished

within 120 days unless the issue of capacity is excluded from the notice and comment requirement. As a result, we would request that the 120 period run only after the comment period has closed and, if additional changes are then necessary, only after a final TERA has been submitted.

C. The Structure of the Petition Process

The Department suggests that the Committee utilize a review process similar to that set forth in the HEARTH Act rather than construct a new review process that could lead to confusion and inconsistent administration. Aligning the statutory authorization for both processes would allow the Department to coordinate the corresponding regulations, thereby making the process more transparent and consistent for tribes and the public. The Department is comfortable with the different standing requirements for third party petitions concerning TERAs versus such petitions under the HEARTH Act.

D. Approval Authority for TEDO's and Tribes Without a TERA

We have strong concerns about the proposed deletion of the TERA requirement for a lease, business agreement, or right-of-way entered into between a tribe and a tribal energy development organization (TEDO). This would be the first time that Congress has allowed for leases to be exempt from Secretarial approval based solely on the identity of the lessee, and not on any determination, either through a capacity determination under a TERA or through approval of regulations, that the tribe has a leasing program that can perform this responsibility.

E. Other Concerns

While the Department has other minor concerns which it would be willing to discuss with Committee Staff, the concerns discussed above are the primary concerns.

Alternative Ideas

The following represent concepts the Department believes may work as alternatives to those in the current bill. We would be happy to help develop these concepts in the context of S. 2132 or a new bill, if requested.

1. Allow the tribes to recover costs from energy developers, *e.g.,* environmental review costs, in the same manner that the Bureau of Land Management can.

The nature of this authority, and any limitations on it, would most likely require tribal consultation.

The BLM has the authority to enter into cost recovery agreements so that the labor costs of processing energy applications are funded by the applicants and not the Department. The BLM's cost recovery authority allows funds from developers to supplement existing appropriations. The BIA has a form of cost recovery authority in theory. However, any funds collected by the BIA must offset appropriated funding, so the authority provides no real benefit to tribes or the BIA in practice. One immediate concern tribes might have could be avoided, however, if this authority specifies that other annual funding for participating tribes, such as Tribal Priority Allocations, cannot be reduced as a consequence of proceeds from cost recovery.

BLM has used its cost-recovery funds to establish Renewable Energy Coordinating Offices (RECOs). The RECO teams include a dedicated Project Manager, a Planning and Environmental Coordinator and two Realty Specialists who process only renewable energy projects within their designated area. The Bureau of Indian Affairs could benefit from having its own independent cost recovery authority to gain revenues to pursue similar initiatives. Staffing issues continue to be an issue in the Department's processing of conventional energy development in Indian Country as well.

2. Specify that a tribe's initial TERA may be limited in scope, and thus complexity, with subsequent amendments to that TERA focusing only on new and additional responsibilities the tribe wishes to undertake.

As currently provided by law, TERA authority is defined by the resource(s) a tribe wants to develop (*e.g.,* oil and gas, solar) and/or the function the tribe wants to undertake (e.g., entering into leases and business agreements, granting rights-of-way). We understand that the current law does not clearly provide a process for a tribe over time to add to its TERA functions without starting over and pursuing an entirely new TERA. It therefore would be helpful to clarify that a tribe that wants to perform only a limited function initially can phase in new, related functions over time as the tribe's capacity increases, by amending its initial, approved TERA and not by having to duplicate any of the still relevant elements of its initial TERA application. Thus, a tribe that wants to develop oil and gas resources will not feel obliged to demonstrate it has the capacity to handle all conceivable aspects of oil

and gas development, from exploration to production to refinement, just to issue oil and gas leases. This is consistent with the way that the Department and the Navajo Nation have implemented the Navajo Nation Trust Land Leasing Act of 2000 [25 U.S.C. § 415(e)] and the way that the Department currently interprets the HEARTH Act of 2012.

Conclusion

Thank you for the opportunity to present the Department's views on S. 2132. I will be happy to answer any questions you may have.

The CHAIRMAN. Thank you, Kevin, for that testimony.

With that, we will go to Ms. Tracey LeBeau.

STATEMENT OF HON. TRACEY A. LEBEAU, DIRECTOR, OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS, U.S. DEPARTMENT OF ENERGY

Ms. LEBEAU. Chairman Tester, Ranking Member Barrasso, thank you for the opportunity to testify on behalf of the Department of Energy.

As Director of DOE's Indian Energy Policy and Programs Office, I am responsible for promoting Indian energy self-determination, and providing, directing, coordinating and implementing energy planning, education, financial and technical assistance programs to support and facilitate energy infrastructure development.

In doing so, my office has quite a unique perspective on energy development challenges and opportunities in Indian country which we are prepared to share with you here today.

While the Department is still reviewing the bill and doesn't have an official position to share with you today, I came prepared to provide an update to the various energy development and management programs under our purview and where we believe we are making some inroads.

I would also like to note that the department is also doing what it can to reduce the serious threat of climate change in Indian country, particularly with a focus on infrastructure resilience and doing what we can to prepare communities for the impacts already being felt in tribal communities.

Since my appointment three years ago, I have fully committed to collaborate with Indian country to ensure we identify and address tribal priorities. Our office's authorities are broad in scope. However, I believe it is noteworthy that tribes are showing high motivation to pursue clean energy development.

Responding to that articulated interest, our focus is on designing and implementing innovative programs to accelerate clean energy and energy infrastructure development. Providing Indian country with committed collaborative technical assistance is a cornerstone of the programs that we now provide. Our guiding star is to work with tribes often in their communities as they seek expertise to support their own strategic long term solutions.

Since 2011, we have made an effort to survey, evaluate, coordinate and better leverage DOE energy programs across the DOE complex. One insight includes that prior to efforts by both DOE and Indian country, largely focused on commercial scale renewable energy projects which are typically developed to export into the broader energy marketplace. This focus is understandable given the revenue potential of such large projects.

In our view, however, given the capacity building and community energy authorities in the Energy Policy Act of 2005, we have identified a considerable opportunity and tribal interest to focus efforts on community scale projects to address high energy costs and articulated want from tribes to own and operate their own facilities.

Key obstacles we continue to monitor with respect to large commercial scale energy development include the cost of financing requirements, particularly for renewable projects that depend on tax incentives, frequent congestion on the grid or difficulty working through interconnections or transmission of service with entities who are not jurisdictional or open access compliant, and being located in markets that do not incentivize renewable energy purchases or markets dominated by utilities exempted from renewable incentive programs.

Another real time observation in working closely with tribes has been the level of education and expertise which remains a challenge for tribes undertaking often complex energy projects but we feel we are making some headway.

The complexity of the renewable energy tax structure, technology risk, and operational issues have made it difficult for even the most financially sophisticated tribes given the unique nature of these issues. It is particularly the case where tribes wish to finance, own and operate their own systems.

Given these observations, the near term goals have been to develop programs to respond to these obstacles and opportunities so tribes can begin to successfully navigate these complexities and begin to get case studies done for Indian country on a broader scale.

Our Strategic Energy Response Team initiative is a signature program and unique to our office. The goal of this program is to bring our strategic technical assistance to tribal communities and Alaska Native communities who have already committed resources and efforts to developing clean energy.

Our investments in the START program are already seeing some returns. Several of our START projects are resulting in tribal investment commitments, construction starts this year and deployment of clean energy solutions.

I am going to leave it at that and look forward to your questions about our programs and some of the funding that has gone out in the last couple years.

Thank you once again for the opportunity to share the exciting things we are doing in partnership with Indian country to promote energy development on Indian lands.

Thank you.

[The prepared statement of Ms. LeBeau follows:]

PREPARED STATEMENT OF HON. TRACEY A. LEBEAU, DIRECTOR, OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS, U.S. DEPARTMENT OF ENERGY

Chairman Tester, Ranking Member Barrasso, and Members of the Committee, thank you for the opportunity to testify on behalf of the U.S. Department of Energy (DOE) on S. 2132, Indian Tribal Energy Development and Self-Determination Act Amendments of 2014. As Director of the Office of Indian Energy Policy and Programs (Office), I am responsible for promoting Indian self-determination and to provide, direct, foster, coordinate, and implement energy planning, education management, conservation, and delivery programs of the Department that promote Indian

tribal energy development, efficiency and use and enhance energy infrastructure. In doing so, my Office has a unique perspective on energy development challenges and opportunities in Indian Country.

While the Department is still reviewing S. 2132 and does not have an official position on the bill at this time, I will provide an update to the various energy development and management programs under our purview where we believe we are making inroads in addition to identifying the continuing challenges facing tribal communities in energy and energy security.

The Department of Energy takes seriously its responsibilities and commitments to Sovereign Tribal Nations. We are committed to strengthening federal-tribal relationships to protect tribal rights and interests to promote tribal sovereignty and self-sufficiency. And the Department is also focused on doing what we can to reduce the serious threat of climate change and, with a heightened focus on resilience, doing what we can to prepare American communities, including tribal communities, for the impacts of a changing climate that are already being felt.

DOE Office of Indian Energy: Background and Executive Summary of Accomplishments

The U.S. Department of Energy Office of Indian Energy was directed by Congress in Title V of the Energy Policy Act of 2005 ("Act"), and in previous legislation enacted in 1992, to direct, foster, coordinate, and implement energy planning, education, management, conservation, and delivery programs that assist Tribes with energy development, capacity building, energy infrastructure, energy costs, and electrification of Indian lands and homes. This Office has specific statutory goals:

- Promote Indian tribal energy development, efficiency, and use;
- Reduce or stabilize energy costs;
- Enhance and strengthen Indian tribal energy and economic infrastructure relating to natural resource development and electrification; and
- Bring electrical power and service to Indian land and the homes of tribal members.

To accomplish these goals, the Act conferred on the Office the authority to provide grants to assist eligible tribal entities in meeting energy education, research and development, planning, and management needs, which could include: Energy generation, energy efficiency, and energy conservation programs; Studies and other activities supporting tribal acquisitions of energy supplies, services, and facilities, including the creation of tribal utilities; Planning, construction, development, operation, maintenance, and improvement of tribal electrical generation, transmission, and distribution facilities; Development, construction, and interconnection of electric power transmission facilities; Developing a program to support and implement research projects that provide opportunities to participate in carbon sequestration practices; and Encouraging cooperative arrangements between Indian Tribes and utilities that provide service to Tribes.

Since joining DOE three years ago, I have been fully committed to implementing the statutory goals for energy development in Indian Country which has included a commitment to continually collaborate with Indian Country. The results of that collaboration are opportunities to identify and address tribal priorities for energy development policies and programs and to fill gaps in current Department programs. More details about these efforts, as well as future plans, are provided below.

Pursuing Sustainable Energy Development in Indian Country

Our Office facilitates energy development in Indian Country—including renewable energy sources such as wind and solar, energy efficiency improvements, and fossil-fuel electric generation that uses carbon sequestration systems, as well as improving the infrastructure needed to deliver this energy. Tribes have shown a high motivation to pursue expanded clean energy development. It is our experience thus far that the DOE Office of Indian Energy Policy and Programs' initiatives that are taking root in Indian Country are a direct reflection of the innovation and the promise of the next generation of tribal energy development. Our priority is focused on providing useful information and tools as well as designing and implementing innovative programs to accelerate clean energy and energy infrastructure development in Indian Country.

Our office tasked the DOE National Renewable Energy Laboratory (NREL) to update all the renewable resource estimates in Indian Country. Based on updated data provided by using updated analysis and modeling tools, the estimated maximum renewable energy resource potential on Indian lands is millions of megawatts (MW) of nameplate capacity. These comprehensive updated estimates can be found at *http://www.nrel.gov/docs/fy13osti/57748.pdf.* It is clear that further development

of these energy resources in Indian Country can provide an opportunity to not only increase tribal energy reliability and self-sufficiency but also contribute to the President's energy security goals and Climate Action Plan.

President Obama and SecretaryMoniz have been extremely supportive of improving the economy of Tribal communities through enhanced clean energy development. At the 2013White House Tribal Nations Conference, the President stated:

> "The health of tribal nations depends on the health of tribal lands. So it falls on all of us to protect the extraordinary beauty of those lands for future generations. And already, many of your lands have felt the impacts of a changing climate, including more extreme flooding and droughts. That's why, as part of the Climate Action Plan I announced this year, my administration is partnering with you to identify where your lands are vulnerable to climate change, how we can make them more resilient."

Indian Tribes and Alaskan Native villages have made clear to us that resilient energy and energy infrastructure can, as a priority, go hand in hand with the vision of a cleaner energy future. Providing Indian Country with committed, collaborative technical assistance is a keystone of the programs and policies of the Office. Our guiding star is to work with Tribes as they implement their own strategic, long-term solutions—solutions with the potential to reduce energy costs, enhance energy security, promote tribal sovereignty and guide Native communities towards a sustainable energy future To support this tribally articulated vision, we support a number of programs that provide energy policy information as well as practical, market-based tools to Tribes that are taking tribal projects past feasibility discussions and into investment and deployment decision making.

The Indian Country Energy and InfrastructureWorking Group was established in August 2011 to ensure these and future technical and financial assistance programs are responsive to Tribes. The working group provides critical advice and recommendations to the Secretary and to the Director of the DOE Office of Indian Energy Policy and Programs on the strategic planning and implementation of the Department's energy resource, energy technology, and energy infrastructure development programs.

Promoting Strong Partnerships and Addressing Common Challenges

We also have taken time to survey, evaluate, coordinate and better leverage a variety of DOE energy programs, for example, the Office of Electricity Delivery and Energy Reliability, Western Area Power and Bonneville Power Administrations, and also including the grants offered through the Office of Energy Efficiency and Renewable Energy. Below are important lessons learned we would like to highlight:

Prior to 2011, efforts both by DOE and in Indian Country largely focused on commercial-scale projects, which are typically developed to export from Tribal areas into the broader energy marketplace. This focus is understandable, given the revenue potential of these large scale projects. In our view, however, the capacity-building and community energy issues highlighted in the Energy Policy Act of 2005 provisions which guide our Office's mission and goals, there was a considerable opportunity and continuing need in community-scale and facility-scale energy generation, as well as energy efficiency. Community-scale and facility-scale projects are developed to provide electricity to the local community (housing) or on-site (government buildings, community buildings), usually in order to address fiscal challenges of high energy costs in Native communities. These types of projects allow tribes to marshal their resources to cleanly generate their own energy and electricity; reduce and/or stabilize their energy costs; create jobs in the construction, operation, and maintenance of these systems; promote energy reliability and self-sufficiency; and promote reservation economic development.

Key obstacles which my Office continues to monitor with respect to commercial-scale energy development in Indian Country include:

- Cost to build projects and the financing and funding options available for projects, particularly renewable projects that use financial incentives not well suited to tribal governments or their enterprises;
- Frequent congestion on the transmission grid or difficulty working through interconnection and transmission service agreements with public electric entities whom are not FERC jurisdictional and/or open access compliant;
- Being located in markets that do not support, require or incentivize renewable energy portfolio standards or purchases or markets that are dominated by utilities whom are exempted from any renewable incentive programs; and

- Securing whole buyers who are willing to purchase renewable energy at the cost to produce the energy and whom are unfamiliar with the legalities of financing or contracting with tribal businesses.

Other recent or real-time observations in working closely with Tribes and Alaska Native communities on a variety of projects and issues include:

Much of the high visibility, celebrated commercial-scale energy development in Indian Country has been almost exclusively in the purview of third-party developers who lease land from Tribes to build renewable energy projects in Indian Country. There are three primary reasons for this: magnitude of upfront capital cost; tax and other financial incentives which promote third party development and ownership by taxable entities; and the extensive expertise required to build commercial-scale projects.

Tribes have become more interested in community-scale, facility-scale development for a number of reasons, including the success of the Energy Efficiency Community Block Grant program, state and utility companies' incentives that pay for on-site generation, newly emerging relative ease of tribal leasing and permitting for renewable projects under the HEARTH Act, and reducing or stabilizing costs.

The level of energy education and expertise remains a challenge for Tribes undertaking often complex energy projects, but we are making headway. And the lack of energy business acumen is not necessarily based on business capacity. The complexity of issues such as renewable energy tax structuring and technology risk and operational issues is difficult to navigate for even the most business-oriented Tribes, given the unique nature of these issues. This is particularly the case where Tribes wish to finance, own and operate their own systems without third party ownership or participation to address tax and related financial incentives.We have provided that training to Tribes which has led to affirmative decision making.

In many respects, there are several issues shared between Alaska Native villages and smaller tribes in the contiguous states, including: remote locations (cannot access transmission grids), small land bases (insufficient for commercial-scale and even sometimes community-scale development), small populations (they lack the human resource capacity for comprehensive energy development), and scarce financial resources. Hence, we have refocused our efforts on the unique energy situation for Alaska Native villages.

Lastly, given this information, our primary short term goal has been to develop several programs to respond to the issues, obstacles, and opportunities in Indian Country so that we can see more implementation of successful, cost-effective projects.

DOE Office of Indian Energy Programs and Priorities

My Office has recently launched several programs and initiatives to promote energy development in Indian Country and address the challenges identified above:

DOE Indian Energy START Program

The Strategic Technical Assistance Response Team (START) initiative is a signature and unique DOE Office of Indian Energy program aimed at advancing next-generation energy development in Indian Country. The START program is focused on the 48 contiguous states and Alaska. *http://energy.gov/indianenergy/resources/start-program*

For the 48 contiguous states, early-stage project development technical assistance will be provided through the START program to selected projects. The goals of the START programs are to bring targeted, strategic technical assistance to Tribes and Alaska Native governments whom have already committed resources and efforts to developing clean energy in their communities. This program is the next step in the development process as the Department has invested in early-stage feasibility in many Indian communities and this next-level development work is providing tribal communities with unbiased, expert technical assistance and information which is helping tribal decision makers to take the next step towards investments and deployment.

After being competitively selected, DOE and NREL experts work directly with tribal community-based teams as well as tribal legal and finance specialists to further develop market feasibility assessments; due diligence research, analysis, and documentation; and early pre-development work to prepare site control, verify resource, pre-qualify off-take agreements and strategy, and produce a permitting plan.

Our investments in the START Program are starting to already see returns. Several START projects have resulted in decisionmaking, tribal investment commitments, construction starts and deployment of clean technology solutions. *http://energy.gov/indianenergy/downloads/office-indian-energy-newsletter-springsummer-2014* In Alaska, we initially teamed up with the Denali Commission to specifically

assist in the development of tribal energy planning for Alaska Native entities. Our Alaska START Program continues to actively seek programmatic and financial federal and state partners to ensure comprehensive collaboration and success for Alaska Native communities in need of stabilized energy costs. Alaska START Program Summary at *http://www.nrel.gov/docs/fy13osti/58879.pdf*

Energy Capacity Building and Tribal Energy Training

In three years, we have established a robust tribal technical assistance and training program which features in-person, in-depth training to tribal leaders and staff as well as web-based, on-demand training for those whom prefer to participate at their own pace and in their own offices.

Since launched in October 2012, our renewable energy web-based curriculum has had over 1,490 visitors and our resource library which hosts dozens of tribally-relevant documents and tools has had over 1,250 visitors. Since July 2013, we have hosted 49 tribal members for in-person renewable product development and finance forums. We have held numerous best practice and peer-to-peer forums—ranging from such topics as solar energy development to transmission and clean energy integration. Since December 2011, approximately 350 tribal leaders and staff have attended these in-person best practices forums.

Energy Transmission Training and Technical Assistance

Understanding the transmission grid, interconnection issues, and issues related to distribution of clean energy also are critical for successful development of energy projects, whether commercial or community scale. We are working with our partners in DOE's Office of Electricity Delivery and Energy Reliability, the Western Area Power Administration, and the Office of Energy Efficiency and Renewable Energy to offer a webinar series to address the range of issues associated to developing clean energy and transmission. Since January 2013, we have had over 2,050 participants in our webinar series.We have as a team also provided almost a dozen Tribes with pre-feasibility transmission study assistance and a range of other training and technical assistance.

Office of Indian Energy's Enhanced Coordination with the Office of Energy Efficiency and Renewable Energy's (EERE) Tribal Energy Program

EERE's Tribal Energy Program was originally established under the Energy Policy Act of 1992 to implement DOE's responsibilities under the Act. Since 2005, the program has been implementing the Office of Indian Energy's EPAct Title V grant authority and has been providing funding related to renewable energy and energy efficiency. Since becoming fully operational, the Office of Indian Energy and EERE's tribal program have jointly offered coordinated energy programs to ensure against duplication, have leveraged grants into START projects to accelerate project successes, and have offered free technical assistance to Tribes (up to 40 hours) which has focused much of its efforts on energy strategic planning and hands-on prioritized technical analysis for clean energy projects.

Other DOE Office and Interagency Coordination

As stated earlier, one of our primary goals is to leverage existing DOE resources to promote and implement energy development in Indian Country. As one recent example, the Department highlighted tribal eligibility and inclusion in our $15 million Solar Market Pathways funding opportunity announcement. This funding opportunity seeks to help state, tribal and local communities develop replicable multi-year strategies that spur significant solar deployment, drive down solar soft costs, and support local economic development efforts. Our experience is the Office's vantage point enhances DOE-wide coordination which facilitates more opportunities to leverage the considerable technical assistance mechanisms developed by our programs for government and community leaders. These programs also have created educational materials byworking with and learning from government leaders on implementing renewable energy policies and programs at the community level. It is our goal to leverage those lessons and best practices in Indian Country, so that we do not have to recreate the wheel and can apply proven techniques and technical assistance.

We also intend to build on the many relationships and coordination efforts we have initiated with other federal agencies that provide support for energy development. Those agencies include the Department of the Interior (DOI), Department of Agriculture, Denali Commission in Alaska, Environmental Protection Agency, and the Department of Commerce. For example, in Alaska, we have been actively engaged in energy development and management activities over the last two years and as part of the National Strategy for the Arctic Region, and will take the lead on the implementation plan for promoting more renewable energy development in the

Alaska Native villages in the Arctic Region. This plan includes continuing the Office of Indian Energy's Alaska START program, comprehensive strategic technical assistance to assist Alaska Native villages with community-wide energy issues and project opportunities. The Office of Indian Energy will also convene a renewable energy development forum in the summer of 2014 to bring together key stakeholders in renewable energy development and focused on building public-private partnerships as the means for structuring and financing renewable energy projects remote Alaska Native villages. Also, in support of its Alaska efforts, the Office of Indian Energy has stationed a full-time program manager in Anchorage.

Setting Priorities in Fiscal Year 2015 Budget and Future Efforts

The President's FY 2015 budget request, which includes $16 million for Indian Energy Policy and Programs as a separate appropriation, reflects the consolidation of our tribal energy programs and Office of Indian Energy into a single office. This increased and consolidated budget request will enable DOE to maintain key initiatives while leveraging authorized tools and build on initiatives developed and executed since 2011. For example, we will continue: to support the Indian Country Energy and InfrastructureWorking Group; the START Program; to expand our energy capacity building efforts; and to provide additional technical assistance to Tribes in support of tribal energy development projects.

Conclusion

Thank you for the opportunity to share the exciting things we are doing in collaboration and in partnership with Indian Country to promote energy development on Indian lands.

The CHAIRMAN. Thank you, Tracey, for your testimony.

I am going to start with questions for Kevin Washburn.

Your testimony references the provisions of the HEARTH Act several times as alternative to some of the TERA language in S. 2132. With the relative success of the HEARTH Act provisions, what are your thoughts on simply expanding authority to include tribal subsurface development for all tribes that choose to adopt their own regulations?

Mr. WASHBURN. I think that is probably the right approach.

We reinvent the wheel a lot in Indian country so we have five volumes of the United States Code with statutes dealing with Indian country. We often do similar things in different ways in different statutes.

I think the HEARTH Act looks like it is being very successful. Since it is something we all agree on, we think that model is a good one to follow. We actually deal with some of the same issues we are trying to deal with in this energy Act.

The CHAIRMAN. Currently, S. 2132 would expand the HEARTH Act provisions to include subsurface development but only for the Navajo Nation. You mentioned the department has some concerns about that provision. Could you talk a little more in-depth about what those concerns are?

Mr. WASHBURN. The Navajo Nation thankfully has gone forward quite a bit on some of these things. We have tested out some of these things with the Navajo Nation and that has worked well.

The HEARTH Act is a good model. However, mineral development is more complicated than business site leases or something like that or surface leases. I think that basically is the issue. That is where the Navajo model is important.

We need to recognize there are some slight differences in the way the HEARTH Act works and the way energy leasing needs to work. Those are sort of the bases for our concerns around the Navajo version.

The CHAIRMAN. We have heard a lot in the last couple of years about a one stop shop. I believe the department is using a virtual one stop shop for Ft. Berthold for oil and gas permitting. The BLM currently has one stop shops in seven locations created by the Energy Policy Act of 2005.

Should Congress consider similar statutory language for the BIA or modify the existing one stop shops to strengthen the BIA's involvement?

Mr. WASHBURN. Let me say this. I think the one stop shop model in some cases has been successful. Everybody has sort of a different idea of what they mean by one stop shop. A lot of tribes mean they want a shop on their reservation that has every Federal agency. That is hard. It is hard to produce this everywhere and get all the Federal agencies lined up that we need to do that. We just don't have the fiscal resources to open all those offices.

We have tried to do it. We have experimented with it. It is not a bad idea. It is just that we don't have all the fiscal resources we need necessarily to accomplish one everywhere that a tribe wants one.

Another approach is to try to locate those in one stop in the United States. It may not be on every single reservation. We have toyed with both those models in different ways. That is an improvement.

The CHAIRMAN. If there was a one stop shop in the United States, I'm assuming that could all be accessed through the Internet?

Mr. WASHBURN. That's right.

The CHAIRMAN. Tracey LeBeau, your testimony discussed the progress your office has made in providing technical assistance to tribes through the START Initiative. Can you describe what has been successful?

Ms. LEBEAU. We have had a few projects, namely the San Carlos Apache is one notable one where we have been able to work very closely on the ground with tribal staff and decision-makers to help them sort through technology issues and also the very complex financial structuring issues inherent in a lot of these renewable energy projects.

I believe they are set to start construction in the next 60 days on a solar project to serve their community needs.

In Alaska, we have had a number of areas where we have made progress to help tribes get technically ready and further down the road to access and better leverage State funding which is a very significant area of funding for Alaskan Native communities.

I am looking forward to other near term announcements on new construction starts this year and next for some of the projects we have been working on.

The CHAIRMAN. You talked about State funds. Is it allowed to bring in the outside capital, private capital?

Ms. LEBEAU. Definitely. As an example, San Carlos leveraged a State renewable energy incentive, and put in their own debt financing to make that project a reality. In Alaska, that has definitely also been the case.

The CHAIRMAN. Vice Chairman Barrasso?

Senator BARRASSO. Thank you very much, Mr. Chairman.

Mr. Washburn, your written testimony stated the Department has strong concerns regarding the tribal energy development organizations. These are organizations that must be majority owned and controlled by the tribe. The bill would treat certain transactions between the tribe and the organization as an agreement with the tribe itself or its agency.

I appreciate the Department staff working with my staff on this provision. Why do you believe the Secretary should review intratribal transactions. I think you said in your statement always trust the tribes.

Mr. WASHBURN. I think our written testimony is probably a bit too strong on that by saying strong concerns. I think we, in general, should trust the tribes.

The key to tribal economic development or energy development organization is slightly removed from the tribes. It is not exactly the tribe, but is an organization the tribe has a strong interest in. I think we should be able to work closely in that context. That is pretty close to the tribe doing the development itself. I see that.

We will work with you on that and see if we can get to comfort on that.

Senator BARRASSO. I want to talk a bit about Federal liability. You written testimony talks about Federal liability provisions for the TERA and the agreements which you say are unclear in my bill but you also say in the Energy Policy Act of 2005 they are unclear.

You recommend replacing the Federal liability provisions with those contained in the HEARTH Act of 2012, which is a broader waiver of liability. Can you explain why you think that a broader waiver of Federal liability is appropriate for subsurface mineral resource development?

Mr. WASHBURN. I guess this goes to the point I made earlier. I am an Indian law scholar in my day job when I am not in the government. We often use slightly different language to reach the same basic meaning in Federal law. We make lawyers wealthy by doing that but we are largely trying to achieve the same outcome.

Again, this is an area where we all agreed on the language in the HEARTH Act and everyone celebrated that language. This language is pretty similar but is slightly different. It feels like it is a full employment act for lawyers and doesn't accomplish much difference. I would suggest that we use the same language we all agreed on in the HEARTH Act.

Senator BARRASSO. For tribal energy resource agreements, a tribe needs to demonstrate sufficient capacity to regulate energy resource development. Your written testimony suggests eliminating from my bill and from current law the provision that requires tribes to demonstrate sufficient capacity.

Can you spend a little time explaining why the capacity determination should be eliminated?

Mr. WASHBURN. It feels kind of old school to me, frankly. We have started trusting tribes a lot more and it has taken time. The Federal Government comes slowly along but has learned to trust tribes more. Again, it is the tribe that lives on this land and is most affected by the outcomes of development.

I think we have learned that when we trust tribes to do the right thing, they are basically doing it for themselves and can be trusted

as well as Federal officials can or Federal bureaucrats can to make decisions about these actions.

Senator BARRASSO. Ms. LeBeau, following up on what we just heard from Mr. Washburn, entering tribal energy resource agreement, a tribe must have sufficient capacity to regulate the development of energy resources. Part of your Office's specific responsibility is to assist tribes in capacity building for energy development.

Can you tell us a bit about how you collaborate with the Department of the Interior to ensure that tribes have that capacity to regulate energy resource developments?

Ms. LEBEAU. Most of our capacity building and training programs really revolve around helping support technical capacity, getting them more acquainted with technology, better acquainted with technology risks, energy facility operations and how these projects typically get developed and financed and what the energy marketplace looks like.

We work very closely with the Department of the Interior as their focus has been more on energy capacity building in terms of governance matters related to energy development. I think there is a nice complementary role we play and we collaborate.

Senator BARRASSO. Thank you, Mr. Chair.

The CHAIRMAN. Senator Heitkamp?

STATEMENT OF HON. HEIDI HEITKAMP,
U.S. SENATOR FROM NORTH DAKOTA

Senator HEITKAMP. Thank you, Mr. Chairman.

First, I want to say, Kevin, in this room are probably about 15–20 students from the Mandan, Hidatsa, and Arikara Nation. What we talk about is their future when we talk about the development of this resource, doing it the right way but also not discouraging folks from actually making that investment.

For many of our treaty tribes, whatever land was negotiated in those treaties is the land they have to develop and use. I think one of the biggest complaints that I hear repeatedly in Indian country is that the system of Federal regulation treats these as if they were public lands and not tribal lands.

I think both of you acknowledge that this is land that first and foremost the tribes have primacy over. The Federal Government would not play the same role if these were private leases that did not have any kind of tribal or Federal land involvement. This creates a real system of problems for developing these resources on the reservation. I don't think it can be understated.

I met yesterday with a major company that does business on the Mandan, Hidatsa, and Arikara Nation who told us that they are this close to pulling out and this close to moving those rigs someplace else because of the morass of Federal permitting.

Senator Dorgan once said it takes four agencies and 49 steps. I think with the Mandan, Hidatsa and Arikara Nation, we say it is seven agencies and 100 steps.

The reason we are pushing in a very aggressive way this notion of one stop shop is all too often what happens is you say, it's BIA's fault, then BIA says it's BLM's fault and BLM says, oh, no, the slow up is with Fish and Wildlife, so around and around and

around the circle they go. In the meantime you have now frustrated everyone.

I want to go back to Senator Tester's discussion about one stop shop and accommodating those concerns not from the standpoint of just ease of discussion but accountability of all those agencies to work together. I know there has been some discussion about doing this in one central location, say Denver, where we can actually get an answer.

I think in order to reestablish faith with the tribes and the mineral rich tribes, we need to have timelines that people actually consider valid and essential. We have the predictability.

I would like you to comment about building a one stop shop in Denver and also talk about what would be your reaction if we set a timeline and said all you Federal agencies who want to participate, instead of saying no longer is this your job, we are going to say you have two months from the time of application to actually get it done, a completed application. What would be your reaction?

Mr. WASHBURN. That would motivate us.

Senator HEITKAMP. I hope so.

Mr. WASHBURN. These are difficult issues and the first one you raised, the fact that on non-Indian lands nearby, private lands, people have to go to one government to get everything worked out, usually the State government. On Indian land, they have to work with both the Federal Government and the tribal government.

You already have double the number of governments people have to work with. There is always sort of a clash of multiple interests whenever we do any kind of energy development. There are sacred sites, endangered species, interest in getting minerals out of the ground, economic development and all that. These are difficult issues. We put different Federal agencies in charge of each of those interests.

Senator HEITKAMP. You do understand their problem with this distinction of public land versus tribal land?

Mr. WASHBURN. I do understand that distinction. The fact is Federal land is what keeps the States from being able to swarm on to it and start regulating. If it is not Federal land, then it is State land. In the grand scheme of things, that is what we recognize. We recognize there is Federal land and there is non-Federal land. Non-Federal land is subject to State taxation and State regulation.

Senator HEITKAMP. Tribal land isn't. You and I can have that discussion another time.

Mr. WASHBURN. Fair enough.

Senator HEITKAMP. I did a little work on State taxation in Indian country. I would dispute some of your statements. Kevin, you and I can debate this back and forth. We have spent a lot of quality time together but just a quick answer to establishing a time certain whether you are willing to do that with all the agencies to facilitate development of tribal resources?

Mr. WASHBURN. They will throw me out on my ear if I go back and say I just got us 60 days to dramatically transform oil and gas development in Indian country.

Let me say this, we are definitely interested in working on something like that. The White House Native American Affairs Council, which Sally Jewel chairs, is meeting tomorrow at the White House

with several Cabinet Secretaries. These are the kinds of issues we are trying to deal with, breaking down silos between Federal agencies. We will work on progress in breaking down those silos.

Senator HEITKAMP. Kevin, I look forward to a response.

The CHAIRMAN. Senator Hoeven.

STATEMENT OF HON. JOHN HOEVEN,
U.S. SENATOR FROM NORTH DAKOTA

Senator HOEVEN. Thank you, Mr. Chairman.

Secretary Washburn, thanks for joining us today.

I found out recently, and it has been in the media, that two infants have died on the Spirit Lake Reservation. We don't have any information yet on what happened. I believe the FBI is investigating.

I am wondering if you have any information you can provide to us or if you have any information, even if you can't provide it to us, and what steps you are taking to ensure that you are doing everything you can and that BIA is doing everything it can to protect families and particularly children on the Spirit Lake Nation Reservation.

Mr. WASHBURN. Thank you for your longstanding concern and interest in this issue. We have worked together quite a bit to try to address these issues. I know you know a lot of the things we have been doing.

I won't speak about the infant investigation because I don't want to jeopardize it. I know you understand that. The public has a right to know these things but we often can't talk about those things until the time is appropriate. I appreciate your understanding about that.

We have made great efforts over the past year or so to ensure that we do better by the children in Indian country. We have been working on several different fronts, we have been working on updating our BIA protection handbook, working on improving our BIA Indian child welfare guidelines for State courts and working specifically at Spirit Lake to try to get Spirit Lake staffed.

We have retroceded the authority from the tribe back to the Federal Government for some of the protection issues out there. Again, I can't talk about the specific facts of the case but we are painfully aware of these issues and are following up.

Senator HOEVEN. Can you assure me you are doing everything you can with BIA to make sure this situation addressed fully and you are doing everything you can for child safety on the reservation?

Mr. WASHBURN. Senator, yes, I can make that statement to you with confidence. We are also working with the Department of Justice rather closely as well.

Senator HOEVEN. As you know, I put forward the Native American Children's Safety Act which would provide additional protection for Native American children in foster homes. Are you willing to work with me to see we get that passed to provide additional protection for children on the reservation?

Mr. WASHBURN. We would be happy to work with you more on that bill. We testified on that bill before and have some concerns

about the bill but we understand what you are trying to do and agree with your overall goals. We will work with you.

Senator HOEVEN. I would encourage you to contact me and if you have concerns, let's work on those. I am willing to do that with you.

Speaking about legislation, the Ranking Member on this Committee introduced a bill, the Indian Tribal Energy Development and Self Determination Act and was kind enough to allow me to co-sponsor that with him. That would address some of the concerns that Senator Heitkamp and Senator Tester have raised in terms of energy development on the reservation across the country.

I would really encourage your help and support on that legislation in terms of getting at some of the red tape and some of the challenges that were faced on the reservation. Have you had a chance to look at the bill and I would like your thoughts on it.

Mr. WASHBURN. We testified extensively on it before you got here. I submitted written testimony on the bill.

I will say that it would be a feather in the cap of this Committee to get something passed on Indian energy this year. We will work with you to get something we can agree on because it is time. The Vice Chairman has been working on this for a very long time and thank you for your support of that work. I'd like to see something happen here.

Senator HOEVEN. Ms. LeBeau, I think you could be very helpful with that legislation as well. Right now, in North Dakota, the Three Affiliated Tribes are producing an amazing amount of oil and gas but they are flaring off 40 percent of the natural gas that is being captured.

We need markets for that gas. That is part of the equation and we have legislation on that part but we have to be able to develop the infrastructure. We cannot do that without permitting of the pipelines and the gathering systems to do it.

I would encourage you to look at that legislation. I think you can make a big difference here in terms of helping not only produce more energy but good environmental stewardship with your help and support for that legislation.

Ms. LeBeau, any thoughts you might have in that regard?

Ms. LEBEAU. I actually had some very initial conversations with the Three Affiliated Tribes on the gas flaring issue. Those conversations and dialogue are ongoing.

Senator HOEVEN. I know expediting permitting infrastructure is something they very much want.

Thank you.

The CHAIRMAN. Senator Murkowski?

STATEMENT OF HON. LISA MURKOWSKI,
U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman. Thank you for the hearing.

I too am honored that the Ranking Member has allowed me to join in his great piece of legislation. I think it is an important bill and I too hope we will able to see this advance through the Committee.

We are seeing such an energy boom across this country. I have been to North Dakota, my colleague's State; I was out in New Mex-

ico, Texas and Colorado over this recess. We are seeing this boom everywhere. Yet our Indian tribes on the reservation are seemingly being left out due to bureaucratic delays with the Federal Government.

It gives tribes the impression that the government doesn't trust them to handle their own energy development on their lands. I heard that frustration.

About 43 years ago in Alaska, we did something different. We gave Alaska Natives collective title to own their own lands under ANCSA. Today our Alaska Native corporations are among the largest energy and mineral producers in our State. They are exploring for natural gas, for oil and are actively developing mineral resources.

Our Native corporations continue to make investments in the State and are really changing the energy landscape. Whether it is through development of hydropower, we are seeing a great deal of wind power developed in our coastal communities and our villages, or whether conventional energy development.

Nearly nine years after passage of EPACT, the Energy Policy Act of 2005, we still have yet to see a tribe in the lower 48 assume regulatory powers over the energy development on tribal lands. We do have to recognize that there are considerable missed opportunities and how we can address these policies to help even that playing field, to get these opportunities, to really make a difference with our tribes. This is what this is all about.

Secretary Washburn, today in the Federal Register, you issued a proposed rule establishing a process for tribes to take lands into trust in Alaska. As I understand it—just me for the first time looking at this proposed rule you announced today—it raises questions from my perspective, probably more questions than answers.

It clearly represents a departure from 43 years of established policy in this area in which Alaska Natives took a different course. We deviated from the failures of the reservation system, set up something that was pretty novel with ANCSA.

I want you to know that I am reviewing your proposed regs in view of its potential impact on Alaska. I will have some questions that I will submit for the record and would appreciate your responses to them at that time.

I want to use the balance of may time this afternoon to talk about the issues as they relate to price of energy in Alaska because as we all know we have abundant resources, we don't have any shortage there but we have an energy crisis. We have an energy crisis in our rural Native communities because of geography, of the distances and the economies of scale.

We had Kawerack testify to this Committee during our energy roundtable last summer, talking about aging infrastructure, high construction costs and antiquated technology. You are in a region where gasoline is costing you about $7 a gallon. In the AVCP region in the YK Delta, you are looking at $600–$800 for a heating bill, your heating bill per month. Understanding what we can do to reduce these costs has been so paramount to so many in Alaska.

This is for you both. You're going to be looking to take lead on renewable energy development. You are bringing together some

stakeholders in renewable energy development and focusing on building these public/private partnerships.

I'm trying to understand exactly what this might mean in terms of how we can deal with some of our high cost issues when talking about these public/private partnerships. Effectively, what can Alaska tribes expect from this?

One of the things AVCP is considering is in an effort to reduce energy costs, one thing we are looking at is the transportation costs and the possible development of an energy freight corridor that could connect the Kuskokwim River villages with the Yukon River villages. They are only separated by about 20 miles of land but how you can kind of knit all of this together to save costs is something that is worthy of consideration.

Can either of you or both of you explain to me how you envision development of these public/private partnerships that might make a difference in reducing energy costs?

Mr. WASHBURN. I'll say a few words and then maybe Director LeBeau can address the question.

In the first four years of the Obama Administration, we focused on massive utility scale type projects, multiple megawatt type projects, things that take a lot of financing to produce. I think one of the insights we have developed over the last couple of years is we need to focus a lot more on local community scale projects that can help a small community like that.

It may not be multiple megawatts and may not be hundreds of millions of dollars but it is very important to that community. I frankly find inspiring some of the things going on in Alaska. I was in King Cove not too long ago and they have a wonderful hydro facility that works great, saves the community a lot of money and saves the earth because it takes less hydrocarbon emission to deliver gas and fuels to the community.

I think we have kind of pivoted, kind of turned a corner that I think will be good for Alaska. I think that is one of the reasons for the public/private partnerships. Private entities can make a big difference as well whenever you're talking about community scale projects.

Senator MURKOWSKI. Ms. LeBeau?

Ms. LEBEAU. I will try to cover a couple things I think might be of particular interest to you, Senator, and a bit of an update.

My office in the last three years has duly noted the issues and unique challenges in Alaska and how they could be better addressed by the Department of Energy. In keeping with that and also recognizing that almost half the tribes in the United States are in Alaska, I can say this year our budget reflects that. Almost half of our entire budget is dedicated to Alaska.

I would also mention—I know this is of particular interest to you—we also have hired a full time person and he is now stationed in Anchorage.

We are very, very committed to working with Alaska Native governments and communities.

On the public/private partnership side, this is a dialogue in which we are keenly interested and I think it will be ongoing. I will note that one area of interest has been talking to the Alaska Native regional corporations, folks like Cook Inlet and others who

have invested in renewable energy projects. We are trying to get some lessons learned from them on what the motivations are, how those investments are doing and if those could be leveraged into Native communities throughout Alaska as well.

We are very much focused on and providing a lot of technical assistance and funding towards trying to answer the questions of what is the best way to integrate renewables and microgrids and incorporate deployment of wind and diesel. I think that is one solution for a lot of Native communities. That is of particular interest and we are still learning some lessons on the best way to integrate those types of technologies in addition to microgrids.

I think once we can answer that question as well as microgrid and renewable integration questions, it will help industry and others investing in those types of systems and with economies of scale, where we have more interest and settling on some technology solutions, and I think you will see the prices of those systems come down.

Those are two areas I wanted to share with you today.

Senator MURKOWSKI. I thank you. Know that I am very interested in how we might be able to make these public/private partnerships work. I know the tribes are hopeful as well.

I will have some additional questions also for you, Director LeBeau, in terms of specifics on the budget for the START program in Alaska, how many villages you anticipate serving and all that. I will submit those for the record.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

I think there will probably be many additional questions because we are not going to have a second round of questioning for both of you.

I want to thank you both for your testimony. I appreciate your being here today.

I would also say it was four or five weeks ago, we had a hearing on several bills I had asked you, Kevin, and a lady by the name of Lillian Sparks Robinson, to give their concerns to us so we could get working on them.

One of them was the bill of Senator Hoeven, the Children's Safety, and the other one was Senator Murkowski's job training bill. The other one was an IHS issue, and I say this because hopefully they are watching, because I wanted to get their concerns. We haven't received them yet, so you need to kick whoever needs to be kicked to get us that information so we can get to working on that. It is critically important for Indian country as we move forward.

That being said, thank you both for being here. I appreciate it.

Now I would like to invite our second panel to come forward. The first panelist is the Honorable Carole Lankford—whom I know very well—the Vice Chair of the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana. We appreciate your making the long haul out here, Carole.

Then we have the Honorable Michael O. Finley, representing both the Colville Tribes of Washington and the National Congress of American Indians. It is always good to have you here, Michael.

Next, we have the Honorable Aletha Tom, Chairwoman of the Moapa Band of Paiute Indians of Nevada. It is very good to have you here, Aletha.

Lastly, we will hear from the Honorable James "Mike" Olguin, Acting Chairman of the Southern Ute Indian Tribe. We met with Mike this morning. We look forward to your testimony.

With that, the same rules apply as earlier. You have five minutes. Please keep it to five minutes so it gives us time for questions. Your entire written testimony will be made a part of the record. That is what is really important, so if you could hit the highlights, we would appreciate it.

We will start with you, Carole. It is good to have you here.

STATEMENT OF HON. CAROLE LANKFORD, VICE CHAIRWOMAN, CONFEDERATED SALISH AND KOOTENAI TRIBES

Ms. LANKFORD. Thank you very much.

Chairman Tester, Vice Chairman Barrasso and members of the Committee, my name is Carole Lankford and I am Vice Chair of the Tribal Council of Confederated Salish and Kootenai Tribes.

This is an exciting time for CSKT as we prepare to purchase Kerr Dam, a nearly 200 megawatt hydroelectric facility located in the heart of the Flathead Reservation. We will soon become the first tribe in the country to fully own, operate and manage its own hydroelectric power facility.

We are very proud of the role and are already one of the largest employers in western Montana and in helping our State's economy. The acquisition of Kerr will be a big step in furthering our supportive role in the economy of our State.

Owning and operating this dam will mean taking control of an important tribal resource that will produce clean energy as well as provide economic benefit to our people, our government and the local economy.

Additionally, the tribes are currently utilizing a Federal grant to explore the feasibility of a biomass facility that can be built on the reservation. This has the potential of creating more renewable energy and jobs on the reservation.

As CSKT prepares to become a major producer of clean and renewable power, we appreciate the opportunity to share our thoughts on S. 2132. We commend Senator Barrasso and the cosponsors of this bill for introducing this important legislation and for your dedication to assisting Indian tribes in the development of energy resources while helping to both generate jobs and growth on reservation economies.

Our detailed statement provides information about some of our energy programs and goals and highlights provisions in S. 2132 we believe are of particular importance to CSKT. Our tribes support this legislation and are particularly pleased with Section 201, Issuance of Preliminary Permits or Licenses, which would give tribes the same preference for acquiring hydro licenses that States and municipalities have.

We also are particularly supportive of Section 202 of the Tribal Biomass Demonstration Project which would provide funding for biomass demonstration projects on four reservations. Both of these

provisions could help CSKT as well as other tribes to further develop their economies and become more self sufficient.

CSKT has always strongly supported the Federal Government's initiatives towards promoting tribal self-governance. We see implementation of Tribal Energy Resource Agreements, TERAs, as consistent with these initiatives.

In particular, CSKT supports allowing tribes to take over environmental review functions that are now vested in the United States pursuant to the National Environmental Policy Act. To the extent that any TERA provision supports tribal self-governance, we support it.

We utilize the weatherization program on our reservation and have a good working relationship with the State in working with them on this program. We support the self-governance provision for weatherization in S. 2132, but it is unclear to us whether in the name of self-governance, we might unintentionally end up with less funding pursuant to S. 203 than we presently receive.

CSKT strongly supports the proposed bill expanded process and consultation with Indian tribes which will improve tribal sovereignty and autonomy over some of the energy resources that form the pillar of tribal culture and governance.

In particular, it is important to increase Federal technical assistance in the interest of Indian tribes. CSKT has a continued benefit from such assistance in more energy areas and is welcome and appropriate.

Much of our comments focused on CSKT's acquisition of Kerr Dam but it is emblematic of harnessing energy resources for electric production, generation, transmission and distribution.

Beyond technical support, increasing tribal autonomy to increase and execute certain business agreements and rights-of-way moves in the right direction of promoting tribal governance and reducing bureaucratic impediments to governance. The combination of increasing capacity and thereby increasing self-governance is right and supported.

Many tribal governments struggle to find energy activities and as such CSKT strongly supports the bill's furthering financial assistance in lieu of Federal activities. This may promote tribal employment, self-governance and self-determination.

Thank you for the opportunity to testify before the Committee.

[The prepared statement of Ms. Lankford follows:]

PREPARED STATEMENT OF HON. CAROLE LANKFORD, VICE CHAIRWOMAN, CONFEDERATED SALISH AND KOOTENAI TRIBES

Chairman Tester, Vice Chairman Barrasso and Members of the Committee:

Thank you for the opportunity to testify on behalf of the Confederated Salish and Kootenai Tribes ("CSKT" or "Tribes"). CSKT has 8,000 members, the majority of whom live on the 1.3 million acre Flathead Reservation located in Western Montana—an area we have inhabited since time immemorial.

This is an exciting time for CSKT as we prepare to purchase Kerr Dam, a nearly 200 Megawatt hydroelectric facility that is located in the heart of the Flathead Reservation. Owning and operating this dam will mean taking control of an important tribal resource that will produce clean energy, as well as provide an economic benefit to our people, our government and the local economy. Additionally, the Tribes are currently utilizing a federal grant to explore the feasibility of a biomass facility that can be built on the reservation. This has the potential to create even more renewable energy and jobs on our Reservation. As CSKT prepares to become a major producer of clean and renewable power, we appreciate the opportunity to share our

thoughts on S. 2132. We commend Senator Barrasso and the co-sponsors of this bill for introducing this important legislation and for your dedication to assisting Indian tribes in the development of energy resources while helping to both generate jobs and grow reservation economies.

Our testimony today will provide information about some of our energy programs and goals and will highlight provisions in S. 2132 we believe are of particular importance to CSKT. Our tribes support this legislation and are particularly pleased with Sec. 201, Issuance of Preliminary Permits or Licenses, which would give tribes the same preference for acquiring hydro licenses that states and municipalities have. Sec. 202, the Tribal Biomass Demonstration Project would provide funding for biomass demonstration projects on four reservations. Both of these provisions could help CSKT, as well as other tribes, to further develop their economies and become more self-sufficient.

CSKT has always strongly supported the Federal Government's initiatives toward promoting tribal self-governance. We see implementation of Tribal Energy Resource Agreements (TERAs) as consistent with these initiatives. In particular, CSKT supports allowing Tribes to take over environmental review functions that are now vested in the United States pursuant to the National Environmental Policy Act (NEPA). To the extent that any TERA provision supports Tribal Self Governance we support it.

Given our active interest in various aspects of tribal energy development and management, we again support the reintroduction of the Indian Energy bill in this Congress.

Background—Confederated Salish and Kootenai Tribes

CSKT is composed of three confederated tribes, the Salish, the Pend O'reille, and the Kootenai. The Salish, Pend O'reille and Kootenai people have lived in the Flathead, Clark Fork, and Bitterroot River basins for thousands of years. CSKT formed a relationship with the United States by signing the Hellgate Treaty on July 16, 1855, whereby the tribes gave up most of their territory in exchange for reserving a permanent homeland called the Flathead Indian Reservation. In our Treaty, we also retained a number of identified off-reservation rights in the lands and waters that we ceded to the United States; rights which have been repeatedly reaffirmed by the highest courts in the United States.

CSKT's utmost priority is to retain the sovereignty and the control over tribal resources that our ancestors preserved for us in the Hellgate Treaty.

Background—Kerr Hydroelectric Project

Kerr Dam, located in the center of the Flathead Reservation on the Flathead River, has had a mixed history in the eyes of our people but in recent decades has been a symbol for both tribal sovereignty and tribal control over tribal resources. The dam was built in the 1930s—with little to no input from the Tribes—and then operated by a private, non-Indian company during a low point of tribal sovereignty over its resources. Then, as Kerr Dam's license was up for renewal in 1980, the leadership and vision of CSKT's elected officials at that time led to a negotiated settlement that now puts CSKT in the position to acquire Kerr Dam—an action the tribes will take on September 5, 2015—and which will launch CSKT into a new era of control over our own resources, as well as being a producer of clean, renewable energy.

CSKT is currently in the process of becoming the first tribe in the country to fully own, operate, and manage its own major hydropower facility. The Kerr Hydroelectric Project consists of: (1) a reservoir for storing water; (2) a dam for regulating the upstream reservoir level and downstream river flow; (3) three water intake structures called penstocks for directing water from the reservoir to the powerhouse; (4) a powerhouse for generating electricity; and (5) related shops, buildings, and roads.

The Kerr Project can generate up to 188 megawatts of electricity at any one point in time. It is not always able to generate at its full capacity because the Flathead River flow is not usually high enough during the fall, winter, and early spring seasons. So, the Project operates at about 66 percent of its capacity in an average year.

By acquiring the Kerr Project, CSKT will be restoring ownership and control over lands of the Flathead Indian Reservation, its treaty-reserved homeland. By assuming control over Kerr Dam, CSKT will be asserting management and control over Flathead Lake and the Flathead River, two critically important water resources of the Flathead Indian Reservation. And by selling the electricity generated at the Kerr Project, CSKT will receive more income than it gets from rental of the Project land, which will allow the tribe to better meet the needs of our people.

CSKT will have opportunities to develop businesses with the skill and ability to operate and maintain large energy generation facilities. The Tribes will have opportunities to develop businesses to sell electricity for a profit. We will create good-paying jobs in the local economy. CSKT will be developing a collection of financial and professional resources that should encourage development of other projects that might benefit CSKT in the future.

Operating Kerr Dam will thus not only give CSKT control once again over the natural resources that the dam utilizes and affects, but it will also provide the tribe with much needed revenue to pay for and improve our tribal programs. We are already one of the largest employers in western Montana and are very proud of the role we play in creating jobs and helping the state's economy. Taking ownership of Kerr Dam will assure we can continue helping our people, our region and our state's economy.

Background—Kerr Project License

The Federal Energy Regulatory Commission (FERC) issued the first license for the Kerr Project for a 50-year term in 1930 to a company owned by the Montana Power Company (MPC). When the Project was due to be relicensed in 1980, CSKT competed with the MPC for the license. After five years of the FERC issuing one-year licenses to MPC, CSKT and MPC came to a negotiated settlement and pursuant to that agreement the FERC issued a license jointly to CSKT and MPC in 1985. In the new license, MPC had the right to occupy and use the Project for the first 30-years of the license term (1985–2015) and CSKT had the right to occupy and use the Project for the last 20-years of the license term (2015–2035). After operating the Project for 14 years, MPC transferred its interest in the license and sold its ownership interest in the Project to PPL Montana in 1999. In order to exercise its right to take over the Project, CSKT has to pay a conveyance price equal to $18,289,798.[1] Once it pays that amount, CSKT will become the sole licensee and will own and control the entire Project. We have been setting aside money every year since 1985 in order to buy Kerr Dam.

Background—Energy Keepers, Incorporated

Energy Keepers, Incorporated (EKI) is a for-profit corporation wholly owned by the Confederated Salish and Kootenai Tribes. EKI was chartered by the United States Department of the Interior pursuant to Section 17 of the Indian Reorganization Act of 1934 (25 U.S.C. § 477). EKI's primary purpose is to act on behalf of CSKT to acquire, construct, manage, operate, and maintain the Kerr Hydroelectric Project, and its related assets, so as to provide electricity, flood control, and environmental protection for regional needs and to make a profit from the sale of electrical energy products, consistent with the terms of the FERC license for the Project. EKI employs fifteen skilled staff members with expertise in business management, engineering, hydropower plant operations, accounting, hydrology, power marketing, human resources, and law. EKI has established its main office in Polson, Montana on the Flathead Reservation.

Particular Provisions of S. 2132 Supported By CSKT: Section 201 and Section 202

1. CSKT Supports Section 201 of Senate Bill 2132 Amending the Federal Power Act to Place Indian Tribes on the Same Footing as States and Municipalities Regarding Preliminary Permits for Original Hydropower Licenses

The Confederated Salish and Kootenai reserved the Flathead Indian Reservation to themselves as a homeland by the terms of the Treaty of Hellgate (12 Stat. 975, July 16, 1855). The Flathead River is a central hydrologic feature of the Flathead Indian Reservation. There may be sites on the Flathead River within the boundaries of the Flathead Indian Reservation that become subject to exploration for establishment of hydropower generation facilities. Currently, Section 7(a) of the Federal Power Act (16 U.S.C. 800(a)) provides a preference to States and municipalities in the grant of permits for development of such potential sites. Providing this preference to any government other than CKST is inconsistent with the purpose and intent of Article II (*i.e.* homeland reservation clause) of the Treaty of Hellgate. Accordingly, in order for the United States to honor the terms of the Treaty, it is important that it correct this error in the law by amending Section 7(a) so that CSKT is not disadvantaged in protecting and/or developing hydropower generation sites on its own treaty-reserved homeland.

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[1] *http://energykeepersinc.com/wp-content/uploads/2014/03/Salish-v-PPL-MT-Final-Award-77-198-0041-12-2-copy.pdf at p. 27.*

Providing CSKT with preference in hydro-licensing is important for a number of reasons. These reasons are briefly listed below.

1. Respect/preserve Flathead Reservation as CSKT treaty-reserved homeland.
   a. Consolidate prospective FERC licensee interests in Flathead River with pre-existing CSKT land ownership rights.
   b. Affirm sovereignty.
2. Facilitate/support/encourage CSKT self-governance by facilitating the internal development of CSKT Indian trust land by CSKT Indians.
   a. Avoid the destabilizing influence that a non-resident corporate licensee would likely bring to the Flathead Reservation economy (e.g. the Kerr Project history shows a continual repetitive pattern of litigation, bankruptcy, and corporate transition by the FERC licensee for the Kerr Project).
   b. Avoid the forced introduction of a State or municipal sovereign into the Flathead Reservation with concomitant potential for jurisdictional conflict over their regulatory and legal affairs.
   c. Respect and restore CSKT's sovereign right to administer to the health, safety, and welfare of Flathead Reservation communities by providing CSKT preferential treatment regarding managerial control over critical electrical infrastructure and flood control assets located on the Flathead Reservation.
3. Respect/preserve CSKT management control of Flathead Reservation treaty-reserved natural resources.
   a. Control of Flathead River flows.
   b. Administration of mitigation activities implemented in response to environmental impacts caused by any newly-licensed FERC project.
4. Provide CSKT with the opportunity to realize the economic benefit from sale of electrical output from any new project resulting in:
   a. Revenues from sale of electricity.
   b. Revenues from headwaters benefits.
   c. Revenues from providing ancillary power services.
5. Provide much-needed employment opportunities for CSKT members emerging from the recession in a climate of high unemployment and poverty.
   a. Exploration, construction, operation and maintenance of any new project.
   b. Mitigation of the cultural and environmental impacts caused by project impacts.
   c. Administration and management of the FERC license and the electricity generated for sale at any new project.
6. Provide entrepreneurial opportunities for CSKT-owned businesses and CSKT member-owned businesses, including:
   a. Energy Keepers, Incorporated
   b. Contractors and subcontractors for services.

2. CSKT Supports Inclusion of Section 202 In Senate Bill 2132 for the Purpose of Providing for Establishment of Four Indian Tribal Biomass Demonstration Projects Each Year Pursuant to Forest Stewardship Agreements Between an Indian Tribe and The Secretaries of Agriculture or Interior

The management of forest resources is a complex business involving climatology, silviculture, forestry, wildlife biology, hydrology, fisheries management, archeology, tribal cultural preservation, range science, weed management, and prescribed fire and fuel treatment. The management challenge is becoming more daunting because of economic depression in the timber industry, insect infestations that threaten forest health, and anticipated changes in climate.

CSKT does not anticipate improvement in the economic conditions within the timber industry. Although CSKT Forestry has been able to sustain a base level of timber harvest in CSKT forests for the past ten years, that level is significantly reduced from harvest levels sustained throughout the forty-year period prior to that. Accordingly, Tribal people who earn their living planting, managing, harvesting, and processing forest products have endured a difficult economic period during the past decade. CSKT is searching for new types for forest products and new economic markets to sell those products into.

CSKT forests, of course, continue to photosynthesize, grow and develop, sequestering carbon and producing woody biomass as a result. CSKT forests are producing more woody biomass than is being harvested. This excess productivity results in a

significant accumulation of biomass in the forest that is unhealthy because it results in older less-diverse forest stands that decay over time and create opportunities for insect infestation.

Our Reservation is located on the crown of the continent at the headwaters of the Flathead River Basin in Western Montana. It is beautiful mountainous country that is reliant on season changes in the rainfall, temperature, and sunlight to sustain a rich environment. Indications are that changes in climate will result in more variability in conditions from year-to-year and more intensity in individual weather events. Accordingly, it is likely that there will be periods of significantly increased temperature and reduced precipitation that might last for several years. Such conditions will add stress to the forest's ecological community that will result in a concentration of diseased, dead and downed timber in steep mountainous terrain that will be combined with hot, dry and windy climatological conditions to cause dangerous wildfires.

CSKT is not alone in its plight or its concern for revitalizing the forest products economy, enhancing forest health, and protecting against destructive wildfire. The boundaries of the Flathead Reservation adjoin federal lands under management authority of the Flathead and Lolo National Forests. We know that our neighboring forest products workers and federal land managers are also grappling with conditions similar to the ones we face.

One way to address the economic, forest health, and wildfire conditions is to harvest forest biomass and burn it in a controlled environment that can capture the heat from burning and utilize it to generate electricity. CSKT is currently conducting an engineering feasibility assessment project regarding use of CSKT forest biomass products as a renewable energy resource for generation of electricity. In conducting our feasibility assessment, it has become apparent to us that securing a steady local fuel supply is a key factor for project success. We therefore, applaud the inclusion of Section 202 within S. 2132. This section authorizes and directs the Secretaries of Agriculture and Interior to enter into forest stewardship agreements with Indian tribes for performance of four demonstration projects each year. As CSKT proceeds with its biomass generation feasibility assessment project, we will need to identify local sources of biomass fuel in sufficient quantity to support long-term sustainable generation of electricity. The forested lands of the neighboring Flathead and Lolo National Forests would be excellent sources of such biomass. In the event our project shows that development of a project is in fact economically viable, then there is a high likelihood that CSKT would seek to secure such a demonstration project for a period of 20-years. CSKT strongly supports the concept of biomass demonstration projects and advocates for inclusion of Section 202 within S. 2132.

Section 203. Weatherization Assistance Program

Section 203 of the bill would amend the Energy Conservation and Production Act of 1976 (42 U.S.C. § 6863(d)) to change the process through which tribes can seek direct funding from the Department of Energy's Weatherization Assistance Program. Under the existing law these funds are allocated to states.

The amendments to Sec. 203 would provide that Tribes can receive direct funding on behalf of their low income members if DOE makes a determination that "the low-income members of an Indian tribe are not receiving benefits under this part that are equivalent to the assistance provided to other low-income persons in such State". Section 203 would allow a Tribal organization serving low-income Tribal members to apply to DOE for a direct grant, and DOE would only have to determine that the services to be provided through the tribe would be equal to or better than services through the state.

Montana Weatherization Program

The State of Montana, through the Montana Department of Public Health and Human Services, offers a Weatherization Program that helps participants to improve the heating efficiency of their homes and thus reduce their energy consumption. [2]

CSKT currently has a sub-contractor relationship with the State whereby the Tribes administer the state's weatherization assistance program for Tribal members. The State takes a small percentage of overall available funds for contract management but it is possible that this amount is less than it would cost CSKT to deal with federal funders. The program with the State has been working well.

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[2] Montana currently maintains a Tribal Energy Assistance eligibility referral directly to the CSKT Lands Department. *http://www.dphhs.mt.gov/programsservices/energyassistance/eligibilityoffices.shtml#tribal.*

Discussion

Section 203 amendments would allow CSKT to seek direct allocation funding for the proportional amount of Tribal low income dollars that go to the State. It is unknown just how much this amount would be or how this could change the current funding rubric. It is possible that dollars would increase or decrease under a Tribal program pursuant to Section 203. [3]

CSKT is exercising (somewhat limited) self-governance by administering funds that come through the State, but the degree of self-governance could arguably be greater if CSKT received funding directly from the Department of Energy. The distinction warrants discussion and clarification.

1. Section 203's amendments could enhance self-governance but would not greatly change the current weatherization program whereby CSKT directly services its members. It is also possible that these funds could be "leveraged" to apply for or match other funding sources (although this is wholly speculative).
2. The financial uncertainties described above make it difficult to conclude whether Section 203's amendments would yield greater or lesser dollars for weatherization programs for CSKT Tribal members.
3. Section 203 allows for Tribal exercise of weatherization dollars only if there is a net financial benefit to Tribal members. This is good from a financial perspective but not as good from a self-governance angle. The program should be made available to Tribes independent of any financial analysis—allowing Tribes to exercise greater self-governance as a priority.
4. We are somewhat conflicted by Section 203 and would like to discuss this more with Committee staff. As one of the original 10 Self Governance Tribes we are big supporters of Self Governance but we certainly don't want to receive less weatherization money than we are now receiving from the state. Changes in the bill to clarify this point may be in order.

Conclusion

CSKT strongly supports the proposed bill's expanded processes and consultations with Indian Tribes—which will improve tribal sovereignty and autonomy over some of the energy resources that form a pillar of tribal culture and governance. In particular it is important to increase federal technical assistance to interested Indian tribes. CSKT has and continues to benefit from such assistance—and more and in more energy-areas is welcome and appropriate. Much of our comments have focused on CSKT's acquisition of the Kerr Dam but it is emblematic of harnessing energy resources for electric production, generation, transmission, and distribution on—and off of—tribal lands.

Beyond technical support, increasing tribal autonomy to create and execute certain business agreements and rights-of-way moves in the right direction of promoting tribal governance and reducing bureaucratic impediments to governance. The combination of increasing capacity and thereby increasing self-governance is right and supported. Many tribal governments struggle to fund energy activities and as such CSKT strongly supports the Bill's furthering financial assistance in lieu of federal activities. This may promote tribal employment, self-governance, and self-determination.

As the history of Kerr Dam's construction and—finally—the return of its land and resources to CSKT underscores, the bill's provisions for certification of tribal energy development entities will greatly enhance tribal governance and our ability to effectuate our visions for the future. We have created energy entities to develop tribal energy resources—and they should be appropriately recognized and supported by the Federal Government.

Thank you for the opportunity to testify before the Committee today. This bill and other Congressional efforts to empower tribes to develop and manage their energy resources are important to us and other tribes. Your support for tribal self-determination and tribal sovereignty is greatly appreciated. Indian energy development is a key component of our ability to control our destiny and provide for our people.

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[3] For example, if low income Tribal members apply for weatherization funds at a greater rate than similar low income non-tribal members, then as a whole the tribal members could be getting more weatherization funds under the current rubric than would happen under Section 203's amendments. Therefore—it is possible that because of state income and application requirements Tribal members are getting more than their proportional share of funds, in which case the amount of dollars for Tribal members would decrease under the amendments. The opposite could also be true.

We look forward to working further with Congress to figure out how CSKT and other tribes can further maximize our energy potential, and we invite future discussions on how to create win-win scenarios for both the tribes and the Federal Government.

The CHAIRMAN. Thank you, Carole.

Next we have Michael Finley representing NCAI and the Colville Tribes of Washington. Welcome, Michael. You may proceed.

STATEMENT OF HON. MICHAEL O. FINLEY, CHAIRMAN, CONFEDERATED TRIBES OF THE COLVILLE INDIAN RESERVATIONS; FIRST VICE PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. FINLEY. Thank you, Mr. Chairman. It is an honor to be able to provide testimony before the Committee today.

I want to acknowledge Vice Chairman Barrasso.

I serve as Chairman to the Confederated Tribes of the Colville Reservation in northeast Washington State and as First Vice President of the National Congress of American Indians. I provide testimony on behalf of both today.

I want to go back four or five years or even longer to where tribes talked about these changes and worked with this Committee on a number of occasions, having hearings on trying to get these very provisions done. I acknowledge Vice Chairman Barrasso for leading the charge on that a number of years ago.

NCAI passed a resolution with overwhelming numbers not three weeks after that bill was introduced back in 2011. Tribes have been working heavily no these provisions and lobbying various congressional offices to try to get this pushed forward.

I want to acknowledge at the outset we do appreciate this Committee's work on this. It is something really important to us. It strikes the very chord of what economic development is in Indian country and using our natural resources.

As stated a number of times, we do have issues with the TERA because no tribes have entered any. We continue to have problems with what those provisions mean and whether or not that makes the best sense for tribes. Because no tribes have entered into it, we are looking at different scenarios within the provisions of this bill as introduced to try to circumvent some of those problems.

Some are here at the administration level. We do need to submit those plans as tribes but we do need to have back and forth dialogue with the Federal Government in a timely manner on when those will be approved and implemented and used to the benefit of the tribes. That is why within there we have the provision about 270 days if you don't answer, we want them to be automatically approved.

There are a number of other provisions under the TERA we feel would be beneficial to tribes and some of the cost savings that the Secretary would have the authority to delegate those monies or always be spent on those TERAs to the tribes for the benefit of those projects outlined within those agreements.

I wanted to touch a bit on more flexibility that we need within the appraisal processes of getting some of these leases approved that we'd like to have implemented within this legislation that would streamline a lot of things for tribes. There are a number of

tribes that have difficulties getting from point A to point B. I know some of the oil and gas tribes who have given testimony in the past, and Senator Heitkamp alluded to it, that there are a lot of steps they have to go through.

I think a lot of the things that we have as problems aren't just within the Energy Policy Act of 2005, there a number of others outlined within my written testimony provided a number of days ago.

There is another provision that the Colville Indian Tribes are particularly interested in, the biomass demonstration projects. This would be a slight amendment to the Tribal Force Protection Act that would allow tribes greater flexibility to enter agreements with the U.S. Forest Service for contiguous U.S. Forest Service properties so those forests can be taken care of better by the tribes in their integrated resource management plans.

A number of tribes have integrated resource management plans. We believe we are the national model. We take care of our forests and natural resources and in particular, our cultural resources and we do that process better than anyone. Our forests directly reflect the model of that.

I think some of the provisions being introduced would allow us to expand that model into the areas of the U.S. Forest Service, create jobs in the economically depressed areas on my reservation which is Kevary County, the poorest county in the State of Washington. It would also provide opportunity for tribes in Alaska to enter similar agreements also outlined in that provision of the bill introduced today.

There are a number of others in my written testimony but I will stop there. I appreciate the time, Mr. Chairman. I will stand for questions.

Thank you.

[The prepared statement of Mr. Finley follows:]

PREPARED STATEMENT OF HON. MICHAEL O. FINLEY, CHAIRMAN, CONFEDERATED TRIBES OF THE COLVILLE INDIAN RESERVATION; FIRST VICE-PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS

Good afternoon Chairman Tester, Vice Chairman Barrasso, and members of the Committee. My name is Michael Finley and I am testifying today in my capacities as Chairman of the Confederated Tribes of the Colville Reservation ("CCT" or the "Colville Tribes") and First Vice President of the National Congress of American Indians. I appreciate the opportunity to testify today on S. 2132, the "Indian Tribal Energy Development and Self-Determination Act Amendments of 2014."

Both the CCT and NCAI strongly support S. 2132. Although not completely identical, all of the provisions in S. 2132 were included in Vice-Chairman Barrasso's Indian energy bill (S. 1684) that this Committee approved by voice vote and reported in the 112th Congress. The full membership of NCAI, in its 2011 annual meeting in Portland, Oregon, adopted a formal resolution supporting S. 1684 less than three weeks after the bill was introduced. I think that speaks volumes about how NCAI and Indian Country feel about Senator Barrasso's Indian energy bill and the extensive tribal consultation and outreach that preceded its introduction.

The CCT is particularly supportive of Section 202, which would authorize a Tribal Biomass Demonstration Project. Not only would this provision encourage biomass utilization, it would also allow tribes to perform forest health projects and on neighboring federal forest and rangelands. With wildfire season rapidly approaching, this type of authority would provide the Colville Tribes and similarly situated tribes with immediate benefits if it were currently in effect.

Because S. 2132 contains provisions that the Committee has previously approved and that would provide Indian country with immediate benefits, we ask that the Committee avoid making significant changes to S. 2132 that would delay or prevent its consideration and passage this year.

Background on the Colville Tribes and NCAI

Although now considered a single Indian tribe, the Confederated Tribes of the Colville Reservation is a confederation of twelve aboriginal tribes and bands from all across eastern Washington State. The present day Colville Reservation is located in north-central Washington State and was established by Executive Order in 1872. The Colville Reservation covers approximately 1.4 million acres and its boundaries include parts of Okanogan and Ferry counties. The CCT has more than 9,400 enrolled members, making it one of the largest Indian tribes in the Pacific Northwest, and the second largest in the state of Washington. About half of the CCT's members live on or near the Colville Reservation. Of the 1.4 million acres that comprise the Colville Reservation, 922,240 acres are forested land.

The Colville Reservation originally consisted of nearly three million acres and included all of the area north of the present day Reservation bounded by the Columbia and Okanogan Rivers. This 1.5 million acre area, referred to as the "North Half," was opened to the public domain in 1891 in exchange for reserved hunting and fishing rights to the CCT and its members. Most of the Colville National Forest and significant portions of the Okanogan National Forest are located within the North Half. Both forests are contiguous to the northern boundary of the Colville Reservation.

NCAI is the oldest and largest American Indian organization in the United States. Tribal leaders created NCAI in 1944 as a response to federal termination and assimilation policies that threatened the existence of American Indian and Alaska Native tribes. Since then, NCAI has fought to preserve the treaty rights and sovereign status of tribal governments, while also ensuring that Native people may fully participate in the political system. As the most representative organization of American Indian tribes, NCAI serves the broad interests of tribal governments across the nation.

Overview of S. 2132

As noted above, all of the provisions included in S. 2132 were considered and favorably reported by this Committee in the 112th Congress. These provisions are discussed in detail in Senate Report No. 112–263. As such, the bill includes the following important proposals.

First, as background, it takes an inordinate amount of time for the Department of the Interior to review and approve permits to drill, exploration and production agreements, rights of ways, and to approve other related energy agreements. Potential partners and development capital sit on the sidelines because it takes years to get anything approved by the Department. Indian Country needs an institutionalized answer to the ongoing challenge of burdensome bureaucratic processes and delay of tribal energy leasing and permitting.

Title I of S. 2132 would provide increased technical assistance to tribes, increase access to existing energy grant and loan guarantee programs, and streamline the process for Indian tribes to enter into Tribal Energy Resource Agreements or "TERAs."

With regard to TERAs, the bill would make many significant improvements to the TERA process under the Energy Policy Act of 2005. I will highlight just a few here.

First, instead of having the BIA approve or disapprove a proposed TERA, under S. 2132 a proposed TERA would automatically go into effect after 270 days unless the BIA determines that there is a reason to disapprove the TERA. This is important because tribes cannot rely on the Federal Government to take action in a timely way.

The bill also includes a funding mechanism for tribes in carrying out a TERA. Some tribes have expressed concerns about the costs of implementing a TERA and would want to have financial support for taking on the additional activities. In a section called "Financial Assistance in Lieu of Activities by the Secretary," S. 2132 would create a process for the Secretary of the Interior ("Secretary") to calculate the savings to the Department resulting from a tribe entering into a TERA and direct the Secretary to make that savings available to the tribe. This would provide funding to the tribe without impacting the Federal budget.

S. 2132 would also clarify the liability clause of the 2005 Act. The bill would make it clear that the exemption from liability only applies to losses stemming from matters negotiated by the tribe itself; it does not extend to matters that are in the Secretary's control or for losses occasioned by the Department's failure to perform its obligations.

Title II contains several miscellaneous provisions that would enhance the ability of Indian tribes to develop both renewable and traditional energy resources. Section 201 would amend the *Federal Power Act* to authorize the Federal Energy Regulatory Commission to give Indian tribes the same preference that states and municipalities

can receive when that Commission issues preliminary permits or original licenses for hydroelectric projects.

Section 203 would amend the home weatherization program under the *Energy Conservation and Production Act* to make it easier for Indian tribes to request and obtain direct funding from the Secretary of Energy. These changes are critical in that they would bring Indian tribes into closer parity with states in being able to access these weatherization funds.

Section 204 would provide new flexibility for tribes to obtain appraisals of tribal mineral or energy resources by allowing tribes or certified, contract appraisers to prepare appraisals and imposing timeframes for Secretarial review and approval of the appraisals. Indian tribes have long complained of delays in obtaining appraisals for their trust resources, particularly for time sensitive transactions with potential economic development benefits. These changes would provide a measure of certainty that the Secretary will approve appraisals of energy resources in a timely manner.

Section 205 would amend the *Long-Term Leasing Act* to allow the Navajo Nation to enter into leases for the exploration, development, or extraction of any mineral resources without the approval of the Secretary, if the lease is executed under tribal regulations, approved by the Secretary and meets certain other requirements.

The CCT is Particularly Supportive of the Tribal Biomass Demonstration Project in Section 202

Section 202 would add a new section to the *Tribal Forest Protection Act of 2004* that would require the Secretary of Agriculture (in the case of Forest Service land) and the Secretary of the Interior (in the case of Bureau of Land Management land) to enter into a collective total of at least four new contracts or agreements with tribes to promote biomass, biofuel, heat, or electricity generation each year of the five-year authorization. Section 202(c) would also authorize for Alaska Native Corporations one biomass demonstration project per year for FY 2015 through 2019.

Renewable energy development such as biomass has been of particular interest to the Colville Tribes as it seeks new ways to promote on-reservation economic development and diversify its economy. Although Section 202 requires the Secretaries to enter into a minimum number of contracts, the Secretaries would be responsible for jointly developing the eligibility requirements. In evaluating applications, the respective Secretaries must consider a variety of factors, including whether a project would improve the forest health or watersheds on the federal land and whether a project would enhance the economic development of the Indian tribe and the surrounding community.

As the Committee is aware, many federal lands that are adjacent to tribal lands are in need of thinning, hazardous fuels reduction, and restoration activities to reduce the risk of catastrophic wildland fires, disease, and insect infestations. These risks are particularly severe in dry forested areas like the Colville Reservation, the southwestern United States, and other areas that do not receive significant rainfall. Indian tribes like the CCT are uniquely situated to carry out these activities because they have a vested interest in ensuring that neighboring federal lands do not pose fire or disease threats that will encroach on our tribal lands and threaten our communities.

Section 202 also allows for tribal management land practices to apply to areas included in contracts or agreements entered into under demonstration projects. This would allow, for example, Indian tribes to incorporate cultural resource considerations into activities conducted on federal lands included in demonstration projects. Many have praised tribal land management practices as being far more efficient than those of their federal counterparts. Federal agencies, however, have been slow to incorporate these principles even on those federal lands that are contiguous to tribal trust lands. Section 202 would provide tribes with this much needed opportunity.

Conclusion

The CCT and NCAI believe that S. 2132 will provide tribes with immediate benefits by removing structural barriers to energy development on tribal lands. We appreciate the Committee's consideration of these issues and look forward to working with the Committee to ensure passage of S. 2132. At this time I would be happy to answer any questions you may have.

The CHAIRMAN. Michael, thank you for your testimony. I very much appreciate it.

Next, we have the Chairwoman of the Paiute Indians of Nevada, Aletha Tom. Aletha, you may proceed.

STATEMENT OF HON. ALETHA TOM, CHAIRWOMAN, MOAPA BAND OF PAIUTES TRIBE

Ms. TOM. Thank you, Mr. Chairman and members of the Committee.

I am Aletha Tom, Chairwoman of the Moapa Band of Paiutes Tribe.

My purpose in testifying today is to provide our story on energy development utilizing one of the most abundant natural resources, solar energy.

Significant land holdings are important in developing solar energy. The Moapa Band of Paiutes has lived in southern Nevada since time immemorial. In 1874, the Moapa Band of Paiutes Reservation encompassed 2.2 million acres which stretched to the Colorado River in the south and Las Vegas to the east. However, subsequent government action reduced our land holdings to 1,000 acres.

In 1980, we got back a portion of our ancestral land pursuant to P.L. 96–491 which restored 70,500 acres of land. Upon our land being returned, the Moapa Band of Paiutes have engaged in significant economic development opportunities by working with industry leading partners to establish large, commercial solar voltaic power.

The Moapa River Indian Reservation's location is unique to other parts of Indian country because we have an energy corridor going through our reservation that contains power lines and gas lines. Additionally, adjacent to our reservation sits two power substations that have capacity to transport the renewable power produced by our solar plant. Hence, we are fortunate to be in this prime development location.

Currently, the Moapa Band of Paiutes has three projects that will supply over 500 megawatts of renewable energy and we are also considering a fourth project that could bring in another 100 megawatts of clean renewable energy. This means we have the potential for 600 megawatts of clean energy that will not add any greenhouse gases to the atmosphere.

Furthermore, we have talked with potential partners who are interested in building even more solar power on our lands.

Government must act as a facilitator to produce more renewable energy. Currently, the Federal Government has made renewable energy investment very attractive by providing an investment tax credit for renewable energy that will end in 2016. This tax credit provides incentives for companies who invest to receive 30 percent tax breaks for a renewable energy investment and significant depreciation tax.

We want to see the Solar Investment Tax Credit extended to provide additional tax incentives for business to invest in Indian country. Of course, we want Indian country to benefit as energy producers, however, very few tribes would have the multi-millions or billions to invest in such large scale projects.

If there was other government spending to invest so that tribes could capitalize more on the renewable energy market as energy producers, it would be the most favorable option.

Tribes who want to engage in solar energy must be aware of the substantial transaction cost in developing these projects. Developers can facilitate the projects by assisting with biological and environmental compliance requirements by supplementing the exper-

tise with the Federal agencies in charge of overseeing these regulations.

Substantial costs can also be attributed to regulatory compliance. Tribes must be prepared to absorb these known and unknown costs.

Tribes interested in renewable energy assistance should work with the Department of Energy, Office of Indian Energy who will provide integral technical assistance to better understand how tribal projects fit into the renewable energy market.

Tribes can utilize the government-to-government relationship to push for legislation and administrative action that will facilitate renewable energy investment on Indian land. Senator Harry Reid has been a leader on this issue in Nevada and attended the groundbreaking for the first utility scale solar project on tribal lands.

As the energy industry changes so do relationships. Nevada Power is now owned by Nevada Energy, which is owned by Warren Buffett. We have worked with the new Nevada Energy president, Paul Caudill and we hope to work positively to develop new renewable energy projects with the company.

In conclusion, we have outlined that renewable solar energy projects can be accomplished with participation of Federal and State governments. We endorse government going down this green road and supporting policies that promote substituting greenhouse gases for clean energy.

We appreciate the Senate Committee on Indian Affairs for holding this worthwhile hearing and listening to the input from the Moapa Band of Paiute Tribes.

Thank you.

[The prepared statement of Ms. Tom follows:]

PREPARED STATEMENT OF HON. ALETHA TOM, CHAIRWOMAN, MOAPA BAND OF PAIUTES TRIBE

Mr. Chairman and Members of the Committee,

Good afternoon. I am Aletha Tom, Tribal Chairwoman of the Moapa Band of Paiutes. My purpose in testifying today is to provide our story on Energy Development utilizing one of the most abundant natural resources; solar energy.

Significant land holdings are important in developing solar energy. Since time immemorial, the Southern Paiutes, the Nuwu, have occupied the Southern Great Basin, including Southern California, Southern Nevada, Northern Arizona, and Southern Utah. The Moapa Band of Paiutes is one of several bands, which make up the entire Southern Paiute Tribe of Nuwu. In 1874, the Moapa Band of Paiutes Reservation encompassed 2.2 million acres which stretched to the Colorado River in the South and Las Vegas to the east. However, subsequent government action reduced our land holdings to 1000 acres. In 1980 we got back a portion of our ancestral land pursuant to P.L 96–491 which restored 70,500 acres of land. Upon our returned land, the Moapa Band of Paiutes have engaged in significant economic development opportunities by working with industry leading partners to establish large, commercial solar voltaic arrays.

The Moapa River Indian Reservation's location is unique to other parts of Indian Country because we have an energy corridor going through our Reservation that contains electronic power lines and gas lines. Additionally, adjacent to our reservation sits two power substations that have capacity to transport the renewable power produced by our solar plant. Hence, we are fortunate to be in this prime development location.

Currently, the Moapa Band of Paiutes, has three projects that will supply over 500 Megawatts of Renewable Energy and we are also considering a forth project that could bring in another 100 megawatts of clean renewable energy. This means we have the potential for 600 megawatts of clean energy that will not add any

green-house gases into the atmosphere. Furthermore, we have talked with potential partners who are interested in building even more solar voltaic systems on our land.

Government must act as a facilitator to produce more renewable energy. Currently the Federal Government has made renewable energy investment very attractive by providing an investment tax credit for renewable energy that will end in 2016. This tax credit provides incentives for companies who invest to receive thirty percent tax break for renewable energy investment and significant deprecation tax.

We want to see the Solar Investment Tax Credit (ITC) extended to provide additional tax incentives for business to invest in Indian Country. Of course, we want Indian Country to benefit as energy producers, however, very few tribes would have the multi-millions or billions to invest in such large scale projects, but if there was other government spending to invest so that Tribes could capitalize more on the renewable energy market as energy producers it would be the most favorable option.

Business entities who rent tribal land should not be afraid to comply with the substance of our Tribal Employment Rights Ordinance (TERO). TERO requires Indian Preference in employment, subcontracting, and business opportunities on the reservation. Complying with TERO is not burdensome because it puts the onus on the tribes TERO officer to provide lists of employable natives and potential training for employment opportunities. Once the tenant company engages the TERO officer and provides a request for assistance the TERO officer has the burden to produce lists of qualified individuals for the tenant company. The tenant company can go beyond entry level and skilled positions it provides additional capabilities for Tribal members to move up to executive positions within the tenants company. Complying with TERO is a vital component to the success of these projects. It provides immediate access to workforce, it provides opportunities to strengthen the workforce, and strengthens the socioeconomic status of the tribe and its community.

Tribes who want to engage in solar energy must be aware of the substantial transaction cost in developing these projects. Developers can facilitate the projects by assisting with biological and environmental compliance requirements by supplementing the expertise with the federal agencies in charge of overseeing these regulations. Substantial costs can also be attributed to legal analysis and reviewing each stage of regulatory compliance. Tribes must be prepared to absorb these known and unknown costs.

If the Tribe has the financing to complete a renewable energy project then this is the optimum route to develop a project. However, in the beginning of a project, do not be surprised to work with a development team, skilled in obtaining energy contracts called Purchase Power Agreements with major utilities, based upon sound resource data. Investors will then be interested in funding these projects for the Solar Investment Tax Credit.

Tribes that are interested in renewable energy assistance should work with the Department of Energy, Office of Indian Energy who will provide an integral technical assistance to better understand how Tribal projects fit into the renewable energy market.

Tribes can utilize the government to government relationship to push for legislation and administrative actions that will facilitate renewable energy investment on Indian land. Senator Harry Reid has been a leader on this issue in Nevada and attended the groundbreaking for the first utility scale solar project on tribal lands.

Limited waivers of certain Tribal Laws are inevitable. Tribes need to work diligently to protect their sovereignty but be aware that the investors also want to limit their financial risk as they invest multi-millions and billions of dollars in these projects. Investors also want longer term deals which have been facilitated by your committee who recently passed the HEARTH act that allows for longer term ground leases.

Do not back down from fighting for your rights. At the same time that the Tribe was beginning to venture into renewable energy, the Tribe sued the old Nevada Power to close down their power plant located adjacent to the Reservation. The Tribe and the Sierra Club sued to shut down the Reid Gardner Power plant, which lies adjacent to our reservation and tribal citizens homes, because the pollution coming from the plant was detrimental to the health of our Tribal members. One result of the lawsuit and other political pressure contributed to the recent Nevada State legislation, SB 123, which directed Reid Gardner to close its 1, 2 and 3 stacks by the end of this year and the large stack by 2017.

As the Energy Industry changes so do relationships. Nevada Power is now owned by Nevada Energy, a subsidiary of Mid American Holding Company, which is owned by Warren Buffett. We have worked with the new Nevada Energy President, Paul Caudill and we hope to work positively to develop new renewable energy projects with the company.

In conclusion, we have outlined that renewable solar energy projects can be accomplished with participation of Federal and State Governments. We endorse government going down this green road and supporting policies that promote substituting green-house gases for clean energy.

We appreciate the Senate Committee on Indian Affairs for holding this worthwhile hearing and listening to input from the Moapa Band of Paiutes. Thank you.

The CHAIRMAN. Thank you, Aletha. We appreciate your input.

Next, we will hear from Acting Chair of the Southern Ute Indian Tribe, Mike Olguin. Mike, you're up.

STATEMENT OF HON. JAMES "MIKE" OLGUIN, ACTING CHAIRMAN, SOUTHERN UTE INDIAN TRIBAL COUNCIL

Mr. OLGUIN. Good afternoon, Chairman Tester, Ranking Member Barrasso and members of the Committee.

I am Mike Olguin, Acting Chairman of the Southern Ute Indian Tribe. I am honored to appear before you today on behalf of my tribe and tribal council to provide testimony on S. 2132, the Indian Tribal Energy Development and Self Determination Act amendments of 2014.

We fully support S. 2132 because it is another step towards maximizing tribal oversight and management of our own resources and minimizing Federal Government's role in these decisions.

Over the years, this Committee has worked on a number of legislative proposals to help us with our primary and ongoing concerns, the delays and impediments to tribal energy development caused by Federal bureaucracy.

With the price of natural gas at one-third of what it was only six years ago, you can easily understand the impact that multiyear delays in the approval of rights-of-way and other energy related transactions had and continues to have on our tribal economy.

In my written statement, I describe the results of a 2009 review conducted by our own tribal energy department of projects then awaiting approval from the Bureau of Indian Affairs. At the time, over 100 rights-of-way and permits were pending before the BIA and over half of those had been pending since 2007 or before. These delays cost the tribe more than $90 million in direct revenue and because the price of gas dropped during that time, much more in lost opportunity costs.

Because we are the largest employer in our region, these impacts are felt in the non-tribal community as well. Despite our concerted efforts to solve this ongoing problem, these bureaucratic delays and their financial impacts continue. We continue to believe the best way to minimize or eliminate these delays and their corresponding negative impacts is to support and enhance tribal decision-making and respect tribal authority and reduce the Federal role on our own lands.

We have been working on various ways to do that for many years. For more than a decade, we have worked with this Committee on specifics. In 2002, our legal counsel wrote to your legal counsel about a possible approach that would allow tribes to elect to escape the Federal bureaucracy for mineral development purposes provided the Secretary has a reasonable indication that an electing tribe will act prudently once cut free.

This proposal ultimately came to fruition in the Indian Tribal Energy Development and Self-Determination Act of 2005. That law gave tribes authority to manage their own energy development transactions without Federal oversight provided the Secretary of Interior was satisfied the tribe had the capacity to do so.

As a pre-condition, the law required a tribe and the Secretary of Interior to first establish a master agreement or a TERA. We continue to believe that TERA provided an important avenue for tribes to assert greater authority over their own energy development. Unfortunately, no tribe has yet entered a TERA to take advantage of that promise.

Each tribe likely has its own reason for not pursuing a TERA but we believe many concerns revolve around, one, the lack of Federal funding for tribes to assume additional duties under a TERA; two, the lack of clarity regarding what inherently Federal functions would be retained by the Federal Government after entering a TERA; three, public input requirements for tribal processes; and four, the extensive capacity demonstrations required before a TERA could be approved.

My written statement contains a detailed review of these complex provisions but I would like to summarize a few of the most important changes S. 2132 would make.

First, the legislation would expand the ability of tribes to demonstrate sufficient capacity to enter a TERA by including successful performance of other Federal 638 contracts on a basis for such demonstrations. These amendments would provide a clear standard we could easily meet.

Second, S. 2132 would broaden the types of activities that could be included in the TERAs. For example, the bill includes addition of transactions related to renewable energy facilities and clarifies that TERAs may extend to pooling and communitization agreements affecting Indian energy minerals.

Third, the bill would allow for cost sharing between the Secretary and a TERA tribe where the tribe's TERA activities have resulted in cost savings to the Secretary.

Last, the bill would require that if the Secretary does not act upon a proposed TERA in 270 days, the TERA becomes effective on the 271st day.

Taken together, these amendments would improve the chances that other tribes would enter TERAs. In addition, the bill would include amendments to support tribal biomass projects and allow tribes to conduct their own appraisals when such appraisals are required for project approval by the Federal Government.

As detailed in my written statement, we strongly support these appraisal provisions and would further streamline BIA's review of many of the realty related transactions.

With that, I am available for any questions.

[The prepared statement of Mr. Olguin follows:]

PREPARED STATEMENT OF HON. JAMES "MIKE" OLGUIN, ACTING CHAIRMAN, SOUTHERN UTE INDIAN TRIBAL COUNCIL

I. Introduction

Chairman Tester, Vice Chairman Barrasso and distinguished members of the Committee, my name is Mike Olguin and I am the Acting Chairman of the Southern

Ute Indian Tribal Council. It is my great honor to appear before you today on behalf of the Southern Ute Indian Tribe in support of the "Indian Tribal Energy Development and Self Determination Act Amendments of 2014," (S. 2132).

Although this legislation was introduced just last month, we have been working closely with this Committee for years in an effort to obtain legislation further empowering Indian tribes to address energy needs and energy development opportunities. We were active participants in field hearings and legislative discussions that led former Chairman Dorgan to introduce S. 3752 in the summer of 2010. While that legislation did not become law, it served as a key building block for S. 1684, which was introduced in late 2009 and for S. 2132, which is before you today and is substantially similar to that earlier bill.

In recent years, tribal leader after tribal leader has come before you to express concerns about the dire economic conditions in Indian Country, and to call for statutory, regulatory and policy changes to improve access to energy and for economic development for their constituents. Today, we hope that members of the Committee will collectively determine that the needs of Indian Country merit passage of S. 2132.

II. The Southern Ute Indian Tribe's Experience in Becoming the Premier Indian Tribal Natural Gas Producer in the United States

The Southern Ute Indian Reservation consists of approximately 700,000 acres of land located in southwestern Colorado in the Four Corners Region of the United States. The land ownership pattern within our Reservation is complex and includes tribal trust lands, allotted lands, non-Indian patented lands, federal lands, and state lands. Based in part upon the timing of issuance of homestead patents, sizeable portions of the Reservation lands involve split estates in which non-Indians own the surface but the tribe is beneficial owner of oil and gas or coal estates. In other situations, non-Indian mineral estates are adjacent to tribal mineral estates. When considering energy resource development, these land ownership patterns have significant implications that range from the potential for drainage to questions of jurisdiction. Historically, we have established solid working relationships with the State of Colorado and local governmental entities, which have minimized conflict and emphasized cooperation.

Our Reservation is a part of the San Juan Basin, which has been a prolific source of oil and natural gas production since the 1940's. Commencing in 1949, our tribe began issuing leases under the supervision of the Secretary of the Interior. For several decades, we remained the recipients of modest royalty revenue, but were not engaged any active, comprehensive resource management planning. That changed in the 1970's as we and other energy resource tribes in the West recognized the potential importance of monitoring oil and gas companies for lease compliance and maintaining a watchful eye on the federal agencies charged with managing our resources.

A series of events in the 1980's laid the groundwork for our subsequent success in energy development. In 1980, the Tribal Council established an in-house Energy Department, which spent several years gathering historical information about our energy resources and lease records. In 1982, following the Supreme Court's decision in *Merrion v. Jicarilla Apache Tribe*, the Tribal Council enacted a severance tax, which has produced more than $500 million in revenue over the last three decades. After Congress passed the Indian Mineral Development Act of 1982, we carefully negotiated mineral development agreements with oil and gas companies involving unleased lands and insisted upon flexible provisions that vested our tribe with business options and greater involvement in resource development.

In 1992, we started our own gas operating company, Red Willow Production Company, which was initially capitalized through a secretarially-approved plan for use of $8 million of tribal trust funds received by our tribe in settlement of reserved water right claims. Through conservative acquisition of on-Reservation leasehold interests, we began operating our own wells and received working interest income as well as royalty and severance tax revenue. In 1994, we participated with a partner to purchase one of the main pipeline gathering companies on the Reservation. Today, our tribe is the majority owner of Red Cedar Gathering Company, which provides gathering and treating services throughout the Reservation. Ownership of Red Cedar Gathering Company allowed us to put the infrastructure in place to develop and market coalbed methane gas from Reservation lands and gave us an additional source of revenue. Our tribal leaders recognized that the peak level of on-Reservation gas development would be reached in approximately 2005, and, in order to continue our economic growth, we expanded operations off the Reservation.

As a result of these decisions and developments, today, the Southern Ute Indian Tribe, through its subsidiary energy companies, conducts sizeable oil and gas activi-

ties in approximately 10 states and in the Gulf of Mexico. We are the largest employer in the Four Corners Region, and there is no question that energy resource development has put the tribe, our members, and the surrounding community on stable economic footing. These energy-related economic successes have resulted in a higher standard of living for our tribal members. Our members have jobs. Our educational programs provide meaningful opportunities at all levels. Our elders have stable retirement benefits. We have exceeded many of our financial goals, and we are well on the way to providing our children and their children the potential to maintain our tribe and its lands in perpetuity.

Along the way, we have encountered and overcome numerous obstacles, some of which are institutional in nature. We have also collaborated with Congress over the decades in an effort to make the path easier for other tribes to take full advantage of the economic promise afforded by tribal energy resources. As we have stated repeatedly to anyone who will listen to us, "We are the best protectors of our own resources and the best stewards of our own destiny; provided that we have the tools to use what is ours." We believe S. 2132 will help us do just that and that's why we strongly urge its passage.

III. Indian Energy Legislation in Previous Congresses

Before commenting on S. 2132, it is important to take a step back and re-visit the underlying reasons that led to introduction of S. 3752 in the 111th Congress, S. 1684 in the 112th Congress and now S. 2132 in the 113th Congress. Second, we believe it is also important to review the factors leading to and the potential significance of Tribal Energy Resource Agreements ("TERAs") as an optional vehicle of tribal self-determination. Third, we hope to show why suggested changes to Title V of the *Energy Policy Act of 2005* are improvements that deserve this Committee's favorable action.

For decades our leaders have had the privilege of working with this Committee and its staff. Even when differences on other political issues have divided Congress, this Committee has consistently worked in a non-partisan manner and led the way in focusing on the needs of Indian Country and in attempting to craft solutions to those problems. We respectfully urge you to do so once again in passing S. 2132.

Because the process leading to S. 2132 has spanned considerable time and has included the introduction of different legislative measures addressing several of the same concerns, we believe it is worthwhile to review those two measures.

Investigative hearings before this Committee leading to introduction of S. 3752 addressed a number of critical problems that continue to exist today in Indian Country. First, the unacceptable, bureaucracy-driven delays in federal approval of Indian mineral leases and drilling permits captured the attention of former Chairman Dorgan., His constituents on the Fort Berthold Indian Reservation watched their non-Indian neighbors get rich from mineral resource development, as their Indian lands remained unleased and undrilled month after month while awaiting federal approval and permitting.

The punitive effect of those delays on the poorest individuals and communities in the U.S. clearly impressed this Committee as unjustifiable. A number of the provisions of S. 3752 attempted to reduce such administrative burdens through such measures as: mandated interagency coordination of planning and decisionmaking; regulatory waiver provisions; relief from land transaction appraisal requirements; and the elimination of fees assessed by Bureau of Land Management for applications for permits to drill on Indian lands.

Other testimony received by this Committee prior to the introduction of S. 3752 reflected frustration regarding barriers to capital, technical expertise and facilities needed for tribes to proceed with alternative or renewable energy development. Again, the Committee attempted to address these concerns through a number of provisions including authorization for greater federal technical assistance, reclassification of certain tribal agricultural management practices as sustainable management practices under federal laws, treating Indian tribes like State and municipal governments for preferential consideration of permits and licenses under the Federal Power Act's hydroelectric provisions, expansion of the Indian Energy Loan Guaranty Program, and authorization for a tribal biomass demonstration project.

In response to other evidence demonstrating inadequate access of many Indian communities to energy services and weatherization assistance, S. 3752 authorized the Secretary of Energy to establish at least 10 distributed energy demonstration projects to increase the availability of energy resources to Indian homes and community buildings. To carry out these projects, *Indian Self-Determination and Education Assistance Act* contracts and funding provisions were proposed for energy efficiency activities associated with tribal buildings and facilities. Section 305 of S. 3752 re-

flected a major revision of the federal weatherization program by authorizing direct grants to Indian tribes for weatherization activities.

S. 3752 also proposed significant revision of the *Indian Land Consolidation Act* to address practical problems in that act's administration and substantial expansion of the durational provisions of the non-mineral, long-term business leasing provisions of 25 U.S.C. § 415(a).

While this brief summary can adequately describe the myriad matters addressed in S. 3752, it is fair to state that it touched a wide array of Indian-related programs involving Indian energy issues.

In contrast, the scope of S. 1684 was considerably more narrow than S. 3752. Nonetheless, S1684 contained provisions equating tribes with States and municipalities for hydropower permits and licensing under the *Federal Power Act* [Sec. 201]. It also made provision for biomass tribal demonstration projects [Sec. 202] and would have provided considerably more modest, indirect access to weatherization program funding [Sec. 203] for Indian communities. It encouraged tribal energy resource development planning in coordination with the Department of Energy [Sec. 101]. That bill did not, however, address a number of matters contained in S. 3752, such as expansion of the Indian Energy Loan Guaranty Program, establishment of distributed energy demonstration projects, revision of the Indian Land Consolidation Act provisions, or expansion of the durational provisions of the non-mineral, long-term business leasing provisions of 25 U.S.C. § 415(a).

S. 2132 revives the concepts set forth in S. 1684 as that earlier bill was referred to the full Senate by this Committee but does not tackle the full scope of reforms that S. 3752 sought. The differences between the much earlier S. 3752 and the much more modest recent proposals reflect both fiscal realities associated with cost as well as the need to ensure this Committee maintains jurisdiction over this important legislation.

Perhaps the most significant element in S. 2132 and S. 1684 is the series of amendments to the TERA provisions initially established in the Title V of the *Energy Policy Act of 2005*. For reasons discussed in more detail below, those changes merit the Committee's support.

We urge those members of this Committee who sponsored S. 3752, which our Tribe fully supported, not to abandon S. 2132 because of its narrower scope because the legislation before you is badly needed in Indian Country.

IV. TERAs and the Balancing of Tribal Self-Determination and Secretarial Review

On August 8, 2005, the *Energy Policy Act of 2005* became law. Title V of this 15-title statute is the "Indian Tribal Energy Development and Self-Determination Act of 2005," which provided comprehensive amendments to Title XXVI of the Energy Policy Act of 1992. One of the key provisions of Title V was Section 2604 [25 U.S.C. § 3504], which created a mechanism pursuant to which Indian tribes, in their discretion, could be authorized to grant energy-related leases, enter into energy-related business agreements, and issue rights-of-way for pipelines and electric transmission facilities without the prior, specific approval by the Secretary of the Interior.. As a pre-condition to such authorization, a tribe and the Secretary of the Interior are first required to enter into a Tribal Energy Resource Agreement (TERA)—a master agreement of sorts—addressing the manner in which such a tribe would process such energy-related agreements or instruments.

Although the TERA concept did not become law until 2005, its genesis before this Committee occurred several years earlier, and our files show that our former Chairman Howard Richards, Sr. formally requested support for similar legislation in 2003. Earlier correspondence confirms that we had the same concerns about federal delays and trust administration then that we have now. A memorandum from our legal counsel to the Committee's legal counsel dated June 30, 2002 states:

> The problems with Secretarial approval of tribal business activities include an absence of available expertise within the agency to be helpful . . . . Some structural alternative is needed. The alternative should be an optional mechanism that allows tribes to elect to escape the bureaucracy for mineral development purposes, provided the Secretary has a reasonable indication that an electing tribe will act prudently once cut free.

Much like the debate that surrounded passage of the *Indian Mineral Development Act of 1982*, the potential diminishment of the Secretary's role contemplated under a TERA caused considerable discussion before this Committee and in Indian Country. We participated in those debates. Ultimately, with the encouragement of the National Congress of American Indians and the Council of Energy Resource Tribes, compromise was reached among this Nation's leaders on energy and Indian issues.

Senator Bingaman and Senator Domenici and Senator Inouye and Senator Campbell reached agreements on a number of matters that paved the way for passage of this legislation in both houses of Congress. These legislative resolutions were reached only because of the overriding recognition that the federally-dominated system of Indian trust administration was broken and was condemning Indian people to an arbitrarily imposed future of impoverishment and hopelessness

Despite the potential promise extended by Section 2604, no tribe has yet entered into a TERA. We have spent considerable time asking ourselves why. Clearly, the inadequacies of federal trust supervision persist and show no signs of marked improvement. Given the years that we have invested in pushing for the TERA alternative, it is worth identifying some of the reasons why no tribe has entered into a TERA. The following is a list of some of the reasons we have considered:

1. The regulations implementing Section 2604 diminished the scope of authority to be obtained by a TERA tribe by preserving to the Federal Government its prerogative in carrying out an array of functions—called "inherent federal functions" in the vernacular—an undefined term that potentially rendered the act's goal of fostering tribal decisionmaking and self-determination practically meaningless.

2. Unlike contracts carried out by Indian tribes under the *Indian Self-Determination and Education Assistance Act*, Section 2604 provided no funding to Indian tribes even though TERA-contracting tribes would be assuming duties and responsibilities typically carried out by the United States.

3. One of the statutory conditions for a TERA, the establishment of tribal environmental review processes requiring public comment, participation, and appellate rights with respect to specific tribal energy projects, was an unacceptable opening of tribal decisions to outside input and potential criticism.

4. Many Indian tribes lacked the internal capacity to perform the oversight functions potentially contemplated in a TERA or standards for measuring tribal capacity were vague or unclear.

5. The extensive process of applying for and obtaining a TERA was simply too consuming and distracting to merit disruption of ongoing tribal governmental challenges.

Clearly, this list is not exhaustive. The lesson for this Committee, therefore, is that the tragic consequence of no approved TERAs and a continued reliance upon federal supervision has been the incredible lost opportunities to develop Indian energy resources during the period between 2005 and today. Those development opportunities were extended to non-Indian mineral owners on State and private lands in other regions of the country, where no federal approval was required for leasing or development.

For example, when one considers that the price of natural gas in 2008 exceeded $10 per mcf, and today is only one third of that price, those lost opportunities may not return for decades. In February 2009, we sent a letter to the Regional Director of the BIA and explained the impacts being caused by bureaucratic delays at that time:

> The Tribe's Energy Department recently completed a review of delays in processing pipeline rights-of-way (ROWs) and BIA concurrences for the BLM to issue permits to drill wells on tribal oil and gas leases. The results of that review are staggering. Currently, approximately 24 Applications for Permit to Drill (APDs) await BIA concurrence. Additionally, approximately 81 pipeline ROWs await issuance by the BIA. Of the 81 pending ROWs, 11 were approved in Tribal Council resolutions adopted in 2006, 44 were approved in Tribal Council resolutions adopted in 2007, 22 were approved in Tribal Council resolutions adopted in 2008, and 4 were approved in Tribal Council resolutions adopted in 2009. It should be emphasized that in each instance these pending transactions have already undergone environmental reviews by the Tribe's Natural Resource Department pursuant to the Tribe's 638 contract with the BIA as well as review by the Tribe's Energy Department.
>
> Had these APDs and ROWs been approved, the Tribe would have received revenue in a number of different ways, including: (i) surface damage compensation; (ii) grant-of-permission fees; (iii) severance taxes; (iv) royalties; (v) Red Willow Production Company working interest income; and (vi) Red Cedar Gathering Company gathering and treating fees. We estimate that lost revenue attributable to severance taxes and royalties alone exceeds $94,813,739. Significantly, during the period of delay, prices for natural gas rose to an historic high, but

have now declined to approximately one-third of that market value. Thus, much of this money will never be recovered by the Tribe.

One example of these delays involves the Samson South Ignacio Pipeline Project, which was introduced to the Tribe and the BIA in June of 2006. It is our understanding that Samson has complied with all BIA requirements, yet BIA continues to resist issuance of the ROWs. We estimate that the Tribe is losing royalties on this project at the rate of approximately $300,000 per month.

Our Tribe continues to believe that TERAs provide great potential as a vehicle for tribal self-determination and development. We remain extremely frustrated with the federal administrative impediments to making simple decisions, such as granting rights-of-way across our lands. The federal system on our reservation is getting worse, not better, and, increasingly, we are spending more time fighting with the Bureau of Indian Affairs (BIA) about nonsensical directives and conditions for obtaining federal approvals. This is true even though we are considered one of the most commercially advanced tribes in the country, with operations in multiple states related to energy exploration and production, commercial real estate acquisition, real estate development, midstream gathering and treating, and private equity investment.

V. TERA Provisions of S. 2132

The major proposed revisions to current law affecting TERAs are found in Section 103 of S. 2132. The proposed changes are technical in many cases and cannot be easily understood without a side-by-side comparison of the existing law. We fully support the changes, however, and hope that the Committee considers them favorably. Some key changes proposed in S. 2132 include the following.

First, Section 103 expands the scope of TERAs to include leases and business agreements related to facilities that produce electricity from renewable energy resources.

Second, clarifying amendments also confirm that TERAs may extend to pooling and communitization agreements affecting Indian energy minerals.

Third, Section 103 expands existing law related to direct development of tribal mineral resources when no third party is involved. Under existing law, because no federal approval for such activity is required, a tribe may lawfully engage in such activity, but few tribes have the capacity or internal expertise to do so directly. The expansion contemplated by Section 103 extends such an approval exemption to leases, business agreements and rights-of-way granted by a tribe to a tribal energy development organization in which the tribe maintains a controlling interest. This provision expands the opportunity for access to capital for direct tribal development without federal approval where the tribe continues to control the activity.

Fourth, Section 103 would make a proposed TERA effective after 271 days following submittal unless disapproved by the Secretary and would shorten the time-period for review of TERA amendments.

Fifth, Section 103 provides for a favorable tribal capacity determination based on a tribe's performance of *Indian Self-Determination and Education Assistance Act* contracts or *Tribal Self Governance Act* compacts over a three year period without material audit exceptions.

Sixth, Section 103 allows for TERA funding transfers to be negotiated between the Secretary and the tribe based on cost savings occasioned by the Secretary as a result of a TERA.

Seventh, Section 103 confirms that TERA provisions are not intended to waive tribal sovereign immunity.

While Section 103 includes other clarifying provisions, these constitute the major changes to TERA requirements found in Section 2604 of existing law. The changes improve the scope and clarity of current statutory provisions.

VI. Other Important Provisions of S. 2132

In addition to the critical changes to existing law regarding TERAs to be made by S. 2132, the legislation also includes much-needed changes to the appraisal requirements for projects proposed on tribal trust lands. Section 204 would amend the *Energy Policy Act of 2005* by making clear that, for such projects where approval by the Secretary of the Interior is required—which is most, if not all of them, the Tribe or a third-party contractor hired by the Tribe can conduct the required appraisal. Furthermore, S 2132 would require Secretarial review and approval of the appraisal within 45 days, unless specific disapproval criteria are met. That section would also require that the Secretary provide the Tribe with written notice of any such disapproval and such notice must explain how any deficiencies in the appraisal can be cured or the specific reasons why the appraisal was not approved.

If enacted, this section would eliminate the timely and often costly delays associated with completing fair market value appraisals for projects on tribal trust lands. Given the unique status and nature of these lands, determining such values is always difficult and sometimes impossible; however, under existing law, the Secretary must have an appraisal in order to ensure that the proposed transaction would benefit the Tribe.

The fact is that the Southern Ute Indian Tribe long ago surpassed the capabilities of the Department of the Interior to advise the Tribe regarding its business decisions and often seeks waivers of the appraisal requirement for various tribal projects. Passage of S. 2132 would ensure that the Tribe has the necessary flexibility to do its own appraisals and require that the Secretary approve those appraisals in a timely fashion, which would significantly reduce the risk of delays and the threats such delays pose to the Tribe's business interests.

VII. Conclusion

Individually and on behalf of the Southern Ute Indian Tribe, I hope that these comments have been instructive as to why we strongly support S. 2132, and respectfully request that you move expeditiously on this legislation on behalf of Indian Country

The CHAIRMAN. Thanks, Mike.

First of all, I appreciate your testimony. I think the Southern Utes' experiences in oil and gas development are exemplary. We appreciate that because it shows what can happen when tribes take the lead on their own resources.

Let's say S. 2132 is enacted with proposed TERA amendments, what would the TERA look like for the Southern Ute and, from your perspective, what roles would the Southern Ute take over and what roles would the Department retain?

Mr. OLGUIN. If the legislation was passed, it definitely would streamline the process for tribes across the Nation to be able to really decide for themselves what is in their best interest for their respective tribes to develop their energy resources. It is really getting the Federal Government out of the way, I think is the bottom line, and give the tribes the authority to manage their own affairs particularly when tribes have reached the ability to well exceed the Federal Government.

I heard earlier about the trust. It is not necessarily the government needs to trust the tribes; the tribes need to be able to trust the government that they will fulfill their obligations. If we look at what is going to be the government responsibility, it is going to be to assist the tribes, help those tribes that do need that assistance because not all tribes are the same. Every tribe is different, every tribe's capacity is different, every tribe's ability to manage their affairs is different, particularly from a financial standpoint. The Federal Government may be needed in areas where tribes need that capacity.

The CHAIRMAN. It has been several decades ago there was oil and gas development on the Ft. Peck Reservation and some salt brine water was reinjected into the ground, got into an aquifer and ruined an aquifer and ruined the drinking water.

I don't know that anyone did anything wrong in this particular case, but it does show a problem of oversight. I will tell you my concern which is somebody has to have the oversight of what is going on. I would like you guys to have it because I think it helps with your self-determination.

Give me your perspective on if there would be gaps that I should be concerned about or if I shouldn't be concerned about potential gaps in oversight.

Mr. OLGUIN. From our perspective, I am not sure if there would be a gap, particularly from Southern Ute's perspective. I can only speak to that.

We require a lot criteria and requirements that are probably more stringent than the Federal Government. When you look at these situations where we have well bores not sealed properly, that may mean some oversight by the Federal Government but in our case, we exceed that.

The CHAIRMAN. Okay. That's good.

Carole, once again I appreciate you being here. Thank you for your leadership when it comes to CSKT in particular.

Your testimony supports inclusion of biomass in S. 2132. Can you explain how the biomass provisions could help the tribe in its biomass energy facility project, because I know you have one?

Ms. LANKFORD. Currently, we are working on feasibility. We don't have biomass.

The CHAIRMAN. How would this help you as you plan?

Ms. LANKFORD. Currently, we have a lot of timber products, a lot of timber sales and things like that but there is always a lot of salvage and things like that which lays on the ground and goes to waste. We also have adjacent to us the U.S. Forest Service. The potential of utilizing some of the slash and things they have would also help operate the biomass facility.

The CHAIRMAN. Vice Chairman Barrasso.

Senator BARRASSO. Chairman Finley, Assistant Secretary Washburn's testimony contends that the Federal liability provisions for the Tribal Energy Resource Agreements in my bill and also the Energy Policy Act of 2005 are unclear. He is recommending replacing those provisions with a broader waiver of liability that is in the HEARTH Act. What do you think about his recommendation?

Mr. FINLEY. I would say that I don't support it. As you stated, they are a lot broader than they really need to be. Within the present language in this bill, those are under negotiated terms between the third party and the tribe. That is a lot narrower.

Senator BARRASSO. Your testimony also noted that your tribe is interested in using biomass to promote on-reservation economic development. My bill would create demonstration projects to give tribes access to reliable supplies of biomass material from Federal land. What kind of economic impact would this demonstration project have for your tribe and other participating tribes?

Mr. FINLEY. I think you would have a great deal of positive impact. We have done a lot of the studies. I think we are ahead of my counterpart to my right on whether or not we want to do a Woody Biomass Project on the Colville Reservation because of the price tag. We have a lot of other needs at the front of the line. Whether or not we can get to that in a timely manner is another story.

However, the ability to manage those forests with the same model that we have not only creates jobs, it is going to allow us the opportunity to sell those to third parties, but allow us to create

a buffer zone for wild fires that are epidemic in my area at certain times of the year, especially this year being a dry year.

Other than the benefits of the biomass plant itself that has all these other ancillary benefits that are almost immeasurable in terms of jobs and safety.

Senator BARRASSO. Thank you very much, Mr. Finley.

Chairman Olguin, the Assistant Secretary's testimony suggested giving the Federal Government a broader exemption from liability for tribal energy development. He recommended using the waiver of liability in the HEARTH Act for tribal energy resource agreements. What do you think of that recommendation?

Mr. OLGUIN. A waiver of liability, not being able to read his testimony—according to what I have been advised, we are supportive either way but I believe we would like to respond to it in writing as again, we have not read his testimony.

Senator BARRASSO. Okay. He contends that the 120-day time period for making the capacity determinations for Tribal Energy Resource Agreements is not enough. He recommends this time period begin running after a public comment period on the agreement ends or after a final agreement is submitted.

Do you think this is an appropriate length of time to have to wait for the capacity determinations?

Mr. OLGUIN. I believe when we look at making these determinations, again we have to look at what is the delay. I think we need to understand why more time is needed particularly when a tribe can demonstrate tomorrow that it has the capability of doing so. Again, I think we need to look at the details of what he is talking about to really understand why he needs a further delay.

Senator BARRASSO. Thank you.

The CHAIRMAN. Senator Heitkamp?

Senator HEITKAMP. I have just a couple quick questions about building on capacity.

Mike, your earlier testimony today when we heard concerns and issues and looking at what is happening in places like North Dakota where we have a huge development on the Mandan, Hidatsa and Arikara Nation and the potential development down in Standing Rock. I would note that the Chairman of Standing Rock Sioux Nation is here with his beautiful wife, Dave Archimbold and Nicole.

I think everyone wants to get out of the business of being paternalistic. I thought some of the answers Mr. Washburn gave about the distinction between tribal lands and Federal lands less than satisfying. I think what we want to do is build out that capacity of self-determination and provide an avenue for predictability for tribal governments to determine the welfare or development of their resources for the welfare of the people that those resources exist.

You obviously have an excellent reputation among the oil and gas producing counties. What can the tribes do working among themselves to build up that capacity and maybe create a broad standard that could then be used to argue with the Department of Interior that you are ready?

Mr. OLGUIN. There have been efforts in the four corners area to bring four corners tribes together who are energy producing and

prompt these questions to come up with some answers. What is it going to take from a capacity standpoint?

A lot boils down to hiring the right people, the experts. Will the tribes have that ability? Some may, some may not but is there an opportunity to share some of that expertise across the board or at least from the standpoint of what are the qualifications needed for some of these positions.

We realize when you look at the Federal capacity, as I said this morning, institutional knowledge is being lost in the Federal system so who better to gain that dealing with tribes seeking education, getting the professionals and actually exceeding the Federal capacity. I think it is working together amongst ourselves as tribes to better our lives.

Senator HEITKAMP. Kind of the point I am getting at is there is a lot of collective knowledge among the tribes that can be shared, a lot of technical expertise that can be shared and really build out that knowledge capacity that will lead to greater self-determination.

I want to congratulate you and your tribe for providing that assistance and encourage you to continue to work in a leadership capacity to work with all the oil and gas producing tribes and coal producing tribes to reach that point at which these minerals which are part of your treaty rights can be determined, the use of those minerals and oil and gas can be determined by the people that own those minerals and that is the tribal entities themselves.

Mr. OLGUIN. Thank you.

The CHAIRMAN. Thank you, Senator Heitkamp.

Again, I want to thank today's tribal witnesses for traveling. Some have traveled far to get here to discuss energy development and this bill, S. 2132.

Aletha, you got off easy but I will tell you I appreciate the work your tribe has done in solar development. It is exemplary, it is great and I think it speaks well to what you are trying to do for your tribe in Nevada.

This hearing is going to remain open for two weeks from today for anyone wishing to submit comments on S. 2132.

Once again, I want to thank my Vice Chair, Senator Barrasso, for his leadership on this issue.

With that, the hearing is adjourned.

[Whereupon, at 3:55 p.m., the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF TEX "RED TIPPED ARROW" HALL, CHAIRMAN, MANDAN, HIDATSA AND ARIKARA NATION

Chairman Tester, Vice Chairman Barrasso and Members of the Committee. My name is Tex Hall. I am the Chairman of the Mandan, Hidatsa and Arikara Nation (MHA Nation). I am honored to present this testimony.

Introduction

The MHA Nation and our Fort Berthold Reservation sit in the middle of the most active oil and gas development in the United States. With about 1200 new oil and gas wells producing 300,000 barrels a day, the MHA Nation, located in west-central North Dakota, is the equivalent of the 7th highest producing oil and gas state in the Country. In this environment we need the full support of the Committee and we need it now.

While the MHA Nation appreciates how quickly the Committee has acted on S. 2132, additional provisions are needed to make a difference in Indian energy development and should be included in the bill as it is brought to the Senate floor. Attached to my testimony is one of the most important amendments needed—creation of a new Indian Energy Coordination Office to streamline and improve energy permitting on Indian lands. We do not need more study or discussion of the issues, we need legislation that will reform how the Federal Government oversees Indian energy development and works with tribes.

The MHA Nation is already working on the front lines and needs your support. We work every day to promote responsible development of our energy resources and provide for our communities, including:

- working directly with energy companies to develop our resources;
- passing and enforcing laws to govern energy activities and protect our human, natural and cultural resources;
- maintaining and improving our Reservation infrastructure; and,
- thinking creatively to maximize the value of our resources and return that value to our members and our Reservation.

The MHA Nation is forging a new era of self-determination. We are no longer merely implementing limited Federal programs nor are we sitting back waiting for the Federal government to regulate in these areas. The MHA Nation is a sovereign government and we must oversee and regulate the tremendous energy development occurring on our Fort Berthold Reservation. In this new era of self-determination, the MHA Nation exercises its own authority, enforces our own laws and delegated federal authority, and develops and manages our own programs.

The MHA Nation asks that this Committee and Congress take action to support our work in two ways. First, by restructuring how federal agencies work to oversee and approve energy development on Indian reservation. Second, by ensuring that Indian tribes are able to exercise full authority over energy development on our lands. These amendments to S. 2132 are described in more detail below and in the attached legislative proposal. These amendments should be included as the bill is brought to the Senate floor.

Legislative History

The Committee already has an extensive record and much agreement on the obstacles to Indian energy development. More study and discussions are not needed. Over the last 6 years, the Committee has investigated the issues, held roundtables, numerous hearings and considered legislation. The MHA Nation has been an active participant in this process.

In the 110th and 111th Congresses, the MHA Nation presented testimony at two Indian energy hearings held by former Senator Dorgan. Senator Dorgan eventually introduced the "Indian Energy Parity Act of 2010" which included a number of pro-

posals supported by the MHA Nation. Senator Dorgan also drafted an "Indian Energy Tax Act." These important tax provisions are needed to help make energy development possible on Indian lands.

In the 112th Congress, the MHA Nation participated in a May 2011 Committee listening session on a draft bill entitled the "Indian Tribal Energy Development and Self-Determination Act Amendments of 2011." At that listening session Committee staff requested that tribes submit proposals to overcome barriers to Indian energy development. In response, on July 18, 2011, the MHA Nation submitted 31 legislative proposals to the Committee.

This draft bill was eventually introduced as S. 1684 and the Committee held a hearing on the bill on April 19, 2012. I testified at that hearing and included the MHA Nation's 31 legislative proposals in my testimony so that they would be a part of the Committee hearing record. I ask that the Committee incorporate my prior testimony into today's testimony by reference.

On the House side, the MHA Nation also testified before the Subcommittee on Indian and Alaska Native Affairs on April 1, 2011 during an Indian Energy Oversight Hearing, in February 15, 2012, on Chairman Young's "Native American Energy Act," H.R. 3973, on April 19, 2012 on the Bureau of Land Management's (BLM) proposed regulation of hydraulic fracturing activities, and on May 10, 2013 on the current version, H.R. 1548, of Chairman Young's Indian energy bill.

Need for Congressional Action

Now is the time to act. The MHA Nation and number of other Indian tribes are already working to develop and manage our energy resources to provide long-term economic security for our communities, increase tribal self-determination, while also providing additional domestic energy resources. Without Congressional action, tribes will miss out on energy development opportunities, or, when development does occur, tribes will be unable to keep the benefits of development on the reservation. Congress should pass legislation that restructures the current process used by federal agencies and provides support for the exercise of tribal authority over energy development.

The MHA Nation is working on the front lines of energy development and Congressional and federal agency support for this work is critical to our success. The Bakken Formation underlying our Reservation is the largest continuous oil deposit in the lower 48 states. In a few short years, our region has become the second highest oil and gas producing area in the United States. We produce more oil than Alaska. Only Texas produces more. Currently, on our Reservation there are 30 drilling rigs, more than 27,000 semi-trucks, and about 1,200 oil and gas wells producing in excess of 300,000 barrels of oil per day.

We are also constructing the first oil refinery to be built in the United States since 1976. Our Clean Fuels Refinery Project is now under construction and we expect to begin operations in 2015. Our refinery will provide the MHA Nation with "value added" benefits for the oil produced on our Reservation, including a higher return on our oil resources, jobs and economic opportunity as well as additional domestic energy production. While we appreciate effort of the Bureau of Indian Affairs (BIA) and the Environmental Protection Agency (EPA) to keep this project moving through the approval process, it took us a decade before the refinery was finally approved. With the level of activity on our Reservation, we cannot wait a decade or even a year for approval of permits.

To improve this situation we need to be working on two fronts. Congress should restructure how federal agencies oversee and approve energy development on tribal lands while also ensuring that tribes have full authority to manage and regulate energy development on our lands. The need for greater tribal authority over permitting and regulatory functions is easy to see by simply looking at federal staffing levels. While these federal agencies must be fully staffed to meet the Federal Government's trust responsibilities, we also cannot wait for the Federal Government to act and have no choice but to take matters into our own hands. The MHA Nation has been doing all we can to fill the regulatory and staffing void while promoting development of our energy resources.

For example, the MHA Nation enacted forward thinking regulations to address widespread and wasteful flaring of natural gas. Regulation was needed to protect our clean air and to promote responsible development of our tribal energy resources. However, we did not address this issue by simply imposing new requirements that make it more difficult to produce energy. Instead, we enacted a regulation that encourages our industry partners to put their gas resources to beneficial use.

One of the reasons we enacted regulations for gas flaring was because the Bureau of Land Management (BLM) lacks the staff to adequately enforce its "Notice to Lessees and Operators of Onshore federal and Indian Oil and Gas Leases: Royalty or

Compensation for Oil and Gas Lost" which covers the flaring of gas. With the majority of the wells on the Reservation being flared and our trust resources going to waste, the MHA Nation was forced to step up and assert our tribal authority.

Indeed, there is no better manager and regulator of our homelands than the tribal government elected to serve the MHA Nation and our Fort Berthold Reservation. In another example, our Tribal Council passed the "Missouri River, Badlands and Sacred Sites Protection Act" to provide for the protection of sensitive natural resources on our Reservation while allowing for responsible energy development. The requirements of this Act even far exceed requirements in the neighboring State of North Dakota.

As a part of this Act, to protect the Missouri River, we require a half-mile setback from the River for oil and gas wells on our lands. Meanwhile, across the River, the State only requires a 500-foot setback. We wish the State had followed our lead. Currently there is pollution of the River and our waters as well pads and oil and gas operations on State lands are washed over by the spring thaw. In addition, in the Badlands portion of our Reservation we require a minimum of 8 wells per multi-pad. Requiring that oil and gas operators combine many wells onto a single multi-pad reduces the number of well pads and roads that are constructed in the sensitive Badlands area.

The MHA Nation has also enacted an Environmental Spill Code including fines and penalties for intentional dumping of hazardous materials. These are just a few examples of the authority the MHA Nation is exercising to promote responsible development of our energy resources. We still have a long way to go and we need the support of Congress and federal agencies in this effort.

As we work on the front lines and enter a new era of self-determination, we ask that this Committee and the full Congress support our efforts in two ways. First, by restructuring how federal agencies work to oversee and approve energy development on Indian reservation. Second, by ensuring that Indian tribes are able to exercise full authority over energy development on our lands. We have developed proposals in both of these areas and explain them in more detail below as well as in the attached legislative proposal.

Proposal for Indian Energy Coordination Office

First, in order to develop federal expertise in the area of Indian energy and to provide leadership as well as a model for efficient permit processing, MHA Nation asks that Congress direct Interior and all the other federal agencies involved in overseeing Indian energy development to establish a high-level Indian Energy Coordination Office in Denver, Colorado. The office would use existing resources to finally provide the staff and expertise that Indian energy deserves.

We are already working with the Administration to create this office, but legislation is needed to combine federal agency authorities and restructure energy permitting on Indian lands. I have attached a legislative proposal to my testimony. The MHA Nation asks that this proposal be included in S. 2132 as it is brought to the Senate floor.

This new office should be located in the Interior Deputy Secretary's Office and be led by a Director who has all the authority necessary to issue permits and approve energy development on Indian lands—everything from permitting oil and gas wells to environmental review of proposed projects. Staff with energy expertise would ensure that permits and other approvals keep moving and do not get hung up by a lack of understanding or experience. The office would also enter into Memorandum of Understanding with EPA, the Army Corps of Engineers, and the United States Department of Agriculture to provide staff and further ensure permit streamlining and coordination. The staff of this office would also provide technical assistance to local BIA Agencies and tribes doing work on the ground.

This office should be guided by basic principles that have been lost in the current unorganized federal system for overseeing energy development on Indian lands. In particular, Indian lands are not public lands. While both Congress and Interior have been clear on this point in the past, over time, some federal agencies have attempted to apply public land management standards to Indian lands. Current examples include the application of the National Environmental Policy Act (NEPA) to Indian lands, and BLM's proposal to regulate hydraulic fracturing on Indian lands. In both cases, these agency actions exceed the underlying legal authority. This Office would end these practices, treat Indian lands according to federal trust management standards, and enter a new era where this Office provides technical support for tribes to regulate these issues ourselves.

The Office we are proposing is long overdue. Congress already approved and expanded similar offices for energy development on federal lands. The same should be provided for Indian lands where the benefits would far exceed the benefits of energy

development on federal lands. Energy development on Indian lands provides badly needed jobs, economic development, revenues for tribal governments, and, if managed properly, long-term investment in reservation infrastructure.

Legislative Proposals to Increase Tribal Authority

In addition, to improved federal coordination, this Committee and Congress should support changes in the law to increase tribal authority over energy development. The MHA Nation and many Indian tribes are entering a new era of self-determination where we exercise tribal authority to regulate energy development on our lands. This new era builds upon and is the fulfillment of decades of successful federal policy and tribal decisionmaking under the Indian Self-Determination and Education Assistance Act of 1975 (Public Law 93–638). In this new era, the Federal Government and Indian tribes should work together on a government-to-government basis to determine how to best regulate activities on Indian lands. Then, with appropriate technical assistance and support from the Federal Government, tribes can exercise their own authority or delegated federal authority to regulate and manage reservation resources.

This is exactly what is required by long-standing federal consultation policies. Executive Order No. 13175 on Consultation and Coordination with Indian Tribal Governments directs in Section 3 that federal agencies "consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes." This Committee and Congress should support these efforts by recognizing and affirming tribal authority in all areas related to the development of Indian energy resources. Below we highlight some of the most important changes needed to support tribal authority over energy development.

First, The most significant authority Indian tribes need to develop their energy resources is exclusive taxing authority over their reservations. Tribes already have the authority to tax, but encroachments on tribal authority, jurisdiction and business activities by state and federal governments, have disabled the ability of tribes to use their taxing authority to support energy and economic development.

The MHA Nation and tribes everywhere, need Congress to pass laws affirming the exclusive authority of Indian tribes to tax energy development on our reservations. Currently, outdated Supreme Court precedent allows states to place a double tax on energy development on tribal lands. These state taxes eliminate or reduce our ability to raise our own taxes and tribes remain ever more dependent upon the Federal Government.

On the MHA Nation's Fort Berthold Reservation, this double taxation forced the MHA Nation into an unfair oil and gas tax agreement with the State of North Dakota. Over the last 5 years the State took almost $500 million in taxes from energy development on my Reservation. In 2013 alone, the State took about $215 million.

The negative impact on the Reservation is not so hard to figure out. For example, in 2011, the State collected more than $75 million in taxes from energy development on the Reservation, but spent less than $2 million of that amount on state roads on the Reservation and zero tax dollars on federal and tribal roads. In addition, none of the 2011 funds were used to mitigate impacts that oil and gas development has had on the MHA Nation, its members and our natural resources.

The State receives this windfall at the expense of the MHA Nation and tribal and federal infrastructure even though in just the past two years the State has collected almost $4 billion in tax revenues from all of the oil and gas development in the State. In fact, within a year or two of the tax agreement, the State's coffers were so full that the State created an investment account whose funds cannot be spent until 2017. While these funds sit around earning interest, federal and tribal infrastructure on our Reservation is such disrepair every day is a state of emergency. This affects our ability to maximize oil and gas development, but more importantly, our residents and tribal members must live in this state of emergency just getting to school or the grocery store.

The MHA Nation needs tax revenues to do the same work that every other government does. We need to maintain roads so that heavy equipment can reach drilling locations, but also so that our tribal members can safely get to school or work. We also need to provide increased law enforcement to protect tribal members and the growing population on our Reservation. We also need to develop tribal codes and employ tribal staff to regulate activities on the Reservation.

The Committee should include in S. 2132 a provision to clarifies the law and affirms the exclusive authority of tribes to tax energy development on Indian lands. Or, at the very least, the Committee should limit the amount of tax revenues that states can take from development of trust resources on Indian lands. Considering that states use none of these dollars to benefit infrastructure on Indian lands, states

should be limited to 10 percent or less of the tax revenues earned from our resources.

Second, if not adopted as a part of the MHA Nation's Indian Energy Coordination Office proposal, the Committee should separately prohibit BLM from applying regulations developed for public lands to Indian lands. Indian lands are not public lands, yet BLM has been incorrectly using its authority under the Federal Land Policy and Management Act of 1976 to regulate activities on Indian lands. In the most recent example, the BLM is developing regulations for hydraulic fracturing activities for public lands and intends to apply those regulations to Indian lands.

BLM's proposed regulations would eliminate much of the oil and gas development the MHA Nation has been working so hard to establish. Indian lands are for the use and benefit of Indian tribes and the Committee should develop legislation that either precludes BLM from exercising authority on Indian lands, or require that BLM develop regulations consistent with its trust responsibility to Indian tribes and not public interest standards. At a minimum, the Committee should require BLM to allow tribes to opt out of the proposed regulations so that tribes may determine whether and how best to regulate hydraulic fracturing on their lands.

Third, the Committee should prohibit EPA from implementing its new synthetic minor source rule for two years to ensure appropriate staffing is in place to administer any new permitting requirements. Energy development on the Fort Berthold Reservation is already limited by layers of bureaucratic federal oversight and federal agencies that are too short-staffed to manage existing requirements. EPA should be prohibited from implementing this new rule, or any new rule, until it can prove that it has the staff resources in place. And, again, EPA should also allow tribes to opt out of the proposed rule so that tribes may determine how best to regulate minor sources on their lands.

Fourth, the Committee should expand the Indian Self-Determination and Education Assistance Act of 1975 (Public Law 93–638) to apply to additional agencies and bureaus. Indian tribes, not federal agencies, have the on the ground staff to provide oversight and monitoring of oil and gas development. Contracting authority under P.L. 638 should be expanded to BLM, EPA, and the Fish and Wildlife Service.

Fifth, we also need to clarify tribal jurisdiction over Reservation activities and any rightsof- way granted by an Indian tribe. Courts have created uncertainty in the law and this uncertainty is yet another disincentive to the energy business.

Sixth, the Committee should develop legislation to expand and clarify the "Buy Indian Act," 25 U.S.C. § 47. As a part of its government-to-government and trust relationship to Indian tribes, the Federal Government should be required to purchase tribally produced or owned energy resources. As an example, the MHA Nation is developing an oil refinery that could supply federal agencies and the Department of Defense with tribally produced and owned domestic energy supplies.

Seventh, S. 2132 should address delays in payments of oil and gas royalties due to approval of Communitization Agreements. Under current law, royalties are due within 30 days of the first month of production. However, without any authority, the BLM has allowed royalty payments to be delayed for months and years pending the approval of Communitization Agreements. This violation of the law cannot be allowed to continue.

Where feasible, S. 2132 should require Communitization Agreements to be submitted at the time an Application for Permit to Drill is filed. This is possible where the oil and gas resource is well known. When this is not feasible, BLM should require that royalty payments from producing wells be paid within 30 days from the first month of production into an interest earning escrow account.

Eighth, S. 2132 should create a low sulfur diesel tax credit for tribal refineries. This credit would be in addition to the existing credit for small business refiners. This legislation would retain the 1,500-employee cap and 5 cents per gallon credit, but remove the barrel and time limits, and provide that the credit may be sold for equity.

Finally, S. 2132 should open the doors of the Department of Energy's (DOE) energy efficiency programs to Indian tribes. Despite a longstanding state program, there are no ongoing programs to support tribal energy efficiency efforts. DOE should allocate not less than 5 percent of existing state energy efficiency funding to establish a grant program for Indian tribes interested in conducting energy efficiency activities for their lands and buildings.

The MHA Nation has included in its legislative proposals a tribal energy efficiency program that is modeled after the successful Energy Efficiency Block Grant (EEBG) program. Despite its success, the EEBG program was only funded one time—under the American Reinvestment and Recovery Act of 2009. To ensure an ongoing source of funding for tribal energy efficiency efforts, tribes should be provided a portion of the funding for state energy efficiency efforts.

Analysis of Indian Tribal Energy Development and Self-Determination Act Amendments of 2014

In general, the MHA Nation supports S. 2132, the "Indian Tribal Energy Development and Self-Determination Act Amendments of 2014." There are only a few problems with some of the provisions in S. 2132. The biggest problem is what is *not* in the bill. After 6 years of investigations, roundtables and hearings, S. 2132 barely scratches the surface of outdated laws and regulations, bureaucratic regulatory and permitting processes and insufficient federal staffing or expertise to implement those processes. While we appreciate the effort made to improve these areas of law, much more needs to be done.

S. 2132 is focused on making changes to the Tribal Energy Resource Agreement (TERA) program that was authorized by Title V of the Energy Policy Act of 2005. The primary benefit of a TERA is to enable a tribe to enter into leases and rights-of-way without Secretarial approval. A TERA would allow a tribe to gain greater control over the multiple approvals needed for oil and gas development.

The MHA Nation supports increasing tribal authority over energy development on Indian lands, but we are concerned about the effect the TERA program may have on the Federal Government's trust responsibility to Indian tribes. The trust responsibility is one way that the Federal Government fulfills its treaty obligations to the MHA Nation and other tribes. As described in my testimony above, the MHA Nation is interested in working with the Federal Government to increase tribal authority in ways that do not potentially undermine the federal trust responsibility.

We appreciate S. 2132's new language that would help clarify the Secretary of the Interior's trust responsibility in relation to leases and agreements made under a TERA. However, S. 2132 should include an additional requirement for the Secretary to further consult with tribes on the effect of a TERA on the Secretary's trust responsibility. The Secretary should then be required to ensure that the results of this consultation are included in the regulations for implementing the TERA program. When laws like the TERA program are enacted, we should all fully discuss and understand any consequences for the trust responsibility and our treaties.

S. 2132 includes a variety of other changes and initiatives that the MHA Nation supports. In some cases, we ask that the Committee revise these proposals to make them more likely to benefit Indian energy development.

First, the MHA Nation supports a legislative directive for the Secretary to include tribes in well-spacing decisions. Currently, the BLM relies on state well spacing forums and often does not consult with tribes regarding this important issue. On our Reservation, the North Dakota Industrial Commission recently approved a well spacing plan that would have stranded $90 million in tribal minerals. The BLM was prepared to approve this plan without discussing it with the MHA Nation. We were lucky to learn about this decision from the BIA. Well spacing is to important to Indian tribes and the Federal Government's trust and treaty responsibilities to be left to state forums that have no authority on Indian lands.

Second, we support changes in S. 2132 that would make it more likely that the DOE would implement its long overdue Indian Energy Loan Guarantee Program. However, the language in S. 2132 falls short of requiring the Secretary of Energy to implement this program as was required for DOE's other loan guarantee program, the Title XVII, Energy Innovations Loan Guarantee Program. DOE should be required to offer loan guarantees to Indian tribes. Indian energy loan guarantees are likely to be more successful than the Title XVII program because of the vast unlocked potential of Indian energy resources. As an example, Interior is already running a successful Indian loan guarantee program but it lacks the budget to fund expensive energy projects.

Finally, the MHA Nation supports changes in S. 2132 that would allow tribes to apply for direct weatherization funding from DOE. However, S. 2132 only goes halfway to solving the problem. Allowing tribes to simply apply for direct funding is an important change, but Indian tribes need a weatherization program that is tailored to Indian Country.

The MHA Nation included needed changes to DOE's weatherization program in its legislative proposals. In addition to direct funding, DOE should reduce reporting requirements for Indian tribes, use weatherization standards that reflect the status of housing in Indian Country, and provide training for energy auditors in Indian Country. The weatherization program is a low-income program and its funding should go to those that need it most—in Indian Country poverty rates are two and half times the national average.

The decades old weatherization program and its management by DOE is an affront to the Federal Government's trust responsibility and DOE's own "American Indian Tribal Government Interactions and Policy." Funding intended, in part, for the members of Indian tribes should not be distributed through state governments who

then distribute the funding through state nonprofits. Regardless of whether this legislation is passed by Congress, DOE should immediately reform its weatherization program consistent with federal trust responsibilities.

Conclusion

I want to thank Chairman Tester, Vice Chairman Barrasso, Senator Heitkamp and the other members of the Committee for the opportunity to highlight the most significant issues the MHA Nation faces as we promote and manage the development of our energy resources. We do not need more studies or discussion. Instead, the attached legislative proposal and other important amendments should be included in S. 2132 as it is brought to the Senate floor. These amendments would, first, restructure how federal agencies work to oversee and approve energy development on Indian reservation and, second, ensure that Indian tribes are able to exercise full authority over energy development on our lands. The MHA Nation asks for the Committee and Congress' support in these two areas as we continue to advance tribal authority over energy development on our lands.

Attachment

Legislative Proposal to Establish an Indian Energy Coordination Office

INDIAN ENERGY COORDINATION OFFICE

(a) ESTABLISHMENT.—The Secretary of the Interior (referred to in this section as the "Secretary") shall establish an Indian Energy Coordination Office (Office) within the Secretary's Office to be located in Denver, Colorado. The Office shall utilize the existing resources of the Department's Division of Energy and Mineral Development within the Office of Indian Energy and Economic Development. The Office shall be led by a Director who shall be compensated at a rate equal to that of level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(b) MEMORANDUM OF UNDERSTANDING.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this section, the Secretary shall enter into a memorandum of understanding for the purposes of implementing this section with—

(A) the Administrator of the Environmental Protection Agency;

(B) the Assistant Secretary of the Army (Civil Works); and,

(C) the Secretary of Agriculture.

(c) DESIGNATION OF QUALIFIED STAFF.—

(1) IN GENERAL.—Not later than 30 days after the date of the signing of the memorandum of understanding under subsection (b), all Federal signatory parties shall fully staff the Indian Energy Coordination Office by transferring employees with expertise in the regulatory issues relating to the Federal agency in which the employee is employed, including as applicable, particular expertise in—

(A) permits and regulatory matters under the Indian Mineral Leasing Act of 1938 (25 U.S.C. §§ 396a *et seq.*), the Indian Mineral Development Act of 1982 (25 U.S.C. §§ 2101 *et seq.*), the Indian Tribal Energy Development and Self-Determination Act, included as Title V of the Energy Policy Act of 2005 (25 U.S.C. §§ 3501 *et seq.*), the Indian Right-Of-Way Act of 1948 (25 U.S.C. § 323 to 328) and its implementing regulations at 25 C.F.R. Part 169, leasing provisions of 25 U.S.C. 415, and surface leasing regulations at 25 C.F.R. Part 162;

(B) the consultations and preparation of biological opinions under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) (ESA);

(C) permits under section 404 of Federal Water Pollution Control Act (33 U.S.C. 1344) (CWA);

(D) regulatory matters under the Clean Air Act (42 U.S.C. 7401 *et seq.*) (CAA);

(E) the preparation of analyses under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA); and,

(F) providing technical assistance and training in various forms of energy development on Indian lands.

(2) DEPARTMENT OF THE INTERIOR STAFF.—The staff transferred by the Secretary under subsection (1), shall include employees from each of the Department's component agencies involved in Indian energy matters, including—

(A) the Bureau of Indian Affairs (BIA);
(B) the Bureau of Land Management (BLM);
(C) the United States Fish and Wildlife Service;
(D) the Office of Natural Resources Revenue;
(E) the Office of the Solicitor;
(F) the Office of the Special Trustee;
(G) the Office of Valuation Services; and,
(H) any other Departmental agencies involved in Indian energy permitting, oversight or processing of royalties related to Indian energy development.

(3) OTHER INTERIOR STAFF.—The Secretary shall transfer all staff from the Division of Energy and Minerals Development within the Office of Indian Energy and Economic Development to the Office.

(4) TEMPORARY STAFF.—The Secretary and any other Federal agency may temporarily assign to the Office additional employees to aid in the establishment of the Office or to advance the objectives of the Office.

(d) DUTIES.—Each employee transferred under section (c) shall—
(1) not later than 90 days from the date of transfer report to the Director of the Office;
(2) be responsible for all issues relating to the jurisdiction of the home office or agency of the employee;
(3) participate as part of the team of personnel working on proposed energy projects, planning, and environmental analyses to:
  (i) streamline Indian energy permitting processes;
  (ii) ensure coordination of activities related to permitting and oversight of energy development and payment of royalties on Indian lands;
  (iii) develop best practices for BIA in the area of Indian energy development, including, standardizing energy development processes, procedures, and forms among BIA Regions and Agency Offices; and,
  (iv) minimize delays and obstacles to Indian energy development.
(4) provide technical assistance to Indian tribes in the areas of energy related engineering, environmental analysis, management and oversight of energy development, assessment of energy development resources, proposals and financing, development of conventional and renewable energy resources.

(e) AUTHORITY.—
(1) IN GENERAL.—The Director shall, notwithstanding any other law, oversee, coordinate, process and approve all Federal leases, easements, right-of-ways, permits, policies, environmental reviews, well spacing units, communitization agreements and any other matters related to energy development on Indian lands, including the authorities listed in subsection (c)(1). The Director shall work in coordination with existing BIA Agencies who shall retain the authorities described in subsection (c)(3).

(2) DELEGATION.—Upon the request of an Indian tribe, the Director may delegate to that Tribe's BIA Regional and Agency offices the authority for all BIA approvals related to energy development on Indian lands. Approvals for all non-BIA authorities shall remain with the Director.

(3) RELATIONSHIP TO BUREAU OF INDIAN AFFAIRS REGIONAL AND AGENCY OFFICES.— In coordination with the Office, BIA Regional and Agency offices and BLM State and Field offices shall continue to provide regional and local services related to Indian energy development including, local realty functions, on-site evaluations and inspections, direct services as requested by Indian tribes and individual Indian and any other local functions to related to energy development on Indian lands. The Office shall provide technical assistance and support to BIA Regional and Agency offices and BLM State and Field offices in all areas related to energy development on Indian lands.

(4) INDIAN SELF-DETERMINATION.—Programs and services operated by this Office may be provided pursuant to contracts and grants awarded under the Indian Self Determination and Education Assistance Act of 1975 (25 U.S.C. §450f).

(5) MANAGEMENT OF INDIAN LANDS.—

(A) The Director shall ensure that all environmental reviews and permitting decisions comply with the United States' unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions, and are exercised in a manner that promotes tribal authority over Indian lands consistent with the federal policy of Indian Self-Determination.

(B) The Director shall also ensure that Indian lands shall not be considered to be Federal public lands, part of the public domain or managed according to federal public land laws and policies.

(f) TRANSFER OF FUNDS.—To establish the Office and advance these efforts, the Secretary shall authorize, for a period of not to exceed two years, the expenditure or transfer of such funds as are necessary from the annual budgets of:

(1) the Bureau of Indian Affairs;
(2) the United States Fish and Wildlife Service;
(3) the Bureau Land Management;
(4) the Office of Natural Resources Revenue; and,
(5) the Office of Mineral Valuation.

(g) TRANSFER OF OTHER AGENCY FUNDS.—The Assistant Secretary of the Army (Civil Works), the Administrator of the Environmental Protection Agency and the Secretary of Agriculture are authorized, for a period of not to exceed two years, to transfer or expend from their annual budgets to the Office, under terms and conditions established by the memorandum of understanding entered into pursuant to subsection (b) above such sums as are necessary to carry out the intent of this section.

(h) BASE BUDGET.—Following the two year periods described in (f) and (g) above, the combined total of the funds transferred pursuant to those provisions shall serve the base budget for the Office.

(i) APPROPRIATIONS OFFSET.—All fees generated from Applications for Permits to Drill, inspection, nonproducing acreage, or any other fees related to energy development on Indian Lands shall, commencing on the date the Office is opened, be transferred to the budget of the Office and may be utilized to advance or fulfill any of its stated duties and purposes.

(j) REPORT.—The Office shall keep detailed records documenting its activities and submit an annual report to Congress detailing, among others:
(1) the number and type of federal approvals granted;
(2) the time it has taken to process each type of application;
(3) the need for additional similar offices to be located in other regions; and,
(4) proposed changes in existing law to facilitate the development of energy resources on Indian lands, improve oversight of energy development on Indian lands.

(k) ADDITIONAL OFFICES.—After the establishment of the Office, and three years of operations, the Secretary may establish such additional Indian Energy Coordination Offices deemed appropriate for the development of energy resources on Indian lands.

PREPARED STATEMENT OF GORDON HOWELL, CHAIRMAN, BUSINESS COMMITTEE FOR THE UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION

Chairman Tester, Vice Chairman Barrasso, and Members of the Committee on Indian Affairs, thank you for the opportunity to testify on S. 2132, the "Indian Tribal Energy Development and Self-Determination Act Amendments of 2011." My name is Gordon Howell. I am the Chairman of the Business Committee for the Ute Indian Tribe of the Uintah and Ouray Reservation. The Ute Indian Tribe consists of three Ute Bands: the Uintah, the Whiteriver and the Uncompahgre Bands. Our Reservation is located in northeastern Utah.

I. Introduction

The Ute Indian Tribe is a major oil and gas producer. Production of oil and gas began on the Reservation in the 1940's and has been ongoing for the past 70 years with significant periods of expansion. The Tribe leases about 400,000 acres for oil and gas development. We have about 7,000 wells that produce 45,000 barrels of oil a day. We also produce about 900 million cubic feet of gas per day. And, we have plans for expansion. The Tribe is in process of opening up an additional 150,000 acres to mineral leases on the Reservation with an $80 million investment dedicated to exploration.

The Tribe relies on its oil and gas development as the primary source of funding for our tribal government and the services we provide. We use these revenues to govern and provide services on the second largest reservation in the United States. Our Reservation covers more than 4.5 million acres and we have 3,175 members living on the Reservation.

Our tribal government provides services to our members and manages the Reservation through 60 tribal departments and agencies including land, fish and wildlife management, housing, education, emergency medical services, public safety, and energy and minerals management. The Tribe is also a major employer and engine for economic growth in northeastern Utah. Tribal businesses include a bowling alley, supermarket, gas stations, feedlot, an information technology company, manufacturing plant, and Ute Oil Field Water Services, LLC. Our governmental programs and tribal enterprises employ 450 people, 75 percent of whom are tribal members. Each year the Tribe generates tens of millions of dollars in economic activity in northeastern Utah.

The Tribe takes an active role in the development of its resources, however, despite our progress, the Tribe's ability to fully benefit from its resources is limited by the federal agencies overseeing oil and gas development on the Reservation. For example, we need 10 times as many permits to be approved. Currently, about 48 Applications for Permits to Drill (APD) are approved each year for oil and gas oper-

ations on the Reservation. We estimate that 450 APDs will be needed each year as we expand operations.

As the oil and gas companies who operate on the Tribe's Reservation often tell the Tribe, the federal oil and gas permitting process is the single biggest risk factor to operations on the Reservation. In order for the Tribe to continue to grow and expand our economy the federal permitting process needs to be streamlined and improved.

It has been 6 years since former Senator Dorgan called for reform of the bureaucratic permit approval process for energy projects. He reported that a single oil and gas well must navigate a 49-step process involving at least 4 understaffed federal agencies. The Tribe asks that the Committee finally take dramatic action to focus federal staff and resources on Indian energy development and provide the support tribes need to fully benefit from their energy resources.

Since Senate Dorgan highlighted the issues there have been numerous Congressional hearings, testimony and roundtables. The Committee has developed an extensive record and there has also been much agreement about the need for change, but no new legislation has been moved out of Committee or passed by Congress. We have seen a few changes within the Administration, but much more needs to be done.

II. A New Indian Energy Regulatory Office is Needed to Improve Staffing and Coordination

Improvements in Bureau of Indian Affairs (BIA) energy staff and coordination are long overdue. Despite our tremendous oil and gas resources and the value of these resources to the Tribe and to domestic energy production, we have only 2 or 3 BIA staff involved in the oversight and processing of oil and gas permits on our Reservation. These BIA staff are responsible for ensuring that permits comply with a numerous federal laws and they must engage in extensive coordination with other federal staff located in remote offices.

The Ute Tribe believes the best way to address these staffing and coordination issues is to establish a new Indian Energy Regulatory Office. This Office would be centrally located in Denver, Colorado, utilize and refocus existing federal resources in Denver, and serve as a new BIA Regional Office for energy producing tribes. To improve oil and gas permitting on Indian lands we need major reforms and high-level federal coordination. In fact, this is exactly the solution that Congress chose for permitting of oil and gas development on federal lands. Why is Congress leaving Indian lands behind?

In 2005, Section 365 of the Energy Policy Act authorized the Bureau of Land Management (BLM) to initiate a "Pilot Project to Improve Federal Permit Coordination." The law allowed BLM to establish 7 pilot offices and streamline federal permitting by co-locating staff from different federal agencies in these offices. Recently, Congress passed a bill to expand these pilot offices.

We need a similar effort for Indian lands. BIA is the most important federal agency charged with supporting Indian energy, yet there are only a handful of BIA employees with energy expertise. A high-level regulatory office would encourage BIA to hire staff with energy expertise, provide technical and financial management support needed by tribes, and improve coordination of Indian energy permitting across Interior and the Federal Government.

The Ute Tribe has developed a legislative proposal to establish an Indian Energy Regulatory Office. I have attached to my testimony a Ute Tribal Resolution setting out the need and propose of this office and providing proposed legislative text. This proposal utilizes existing funding and staff, but refocus these resources as a BIA Regional Office that would support BIA Agency Offices with high levels of energy permitting. We ask that this proposal be included in S. 2132 before it is approved by this Committee.

III. No-Cost Improvements to Indian Energy Permitting

The Ute Tribe supports S. 2132, but much more needs to be done. In prior Congresses and in response to requests by former Senator Akaka, Senator Barrasso and, on the House side, Congressman Young, the Tribe developed 32 legislative proposals to improve Indian energy permitting, coordination and financing. The Tribe submitted these proposals to the Committee on July 11, 2011, and we included these proposals in our written testimony on a prior version of this bill, S. 1648, on April 19, 2012. We incorporate our prior testimony and these 32 legislative proposals in today's testimony by reference.

Today we highlight a few of these proposals that the Committee could include in S. 2132 without increasing the cost of the bill or government bureaucracy. The proposals we highlight would address gaps in the current system, clarify the authority

of tribal governments to oversee energy activities on tribal lands and increase the resources available to tribes to address all aspects of energy development on tribal lands. These proposals are attached to my testimony. They include:

- ensuring that Communitization Agreements do not delay royalty payments;
- ensuring that the Environmental Protection Agency's new regulation of minor sources in Indian Country will not impede energy development;
- clarifying tribal jurisdiction over right-of-ways;
- ensuring that tribes have the tax revenues needed to support tribal infrastructure;
- limiting the number of times Interior can require revisions to a Tribal Energy Resource Agreement Application;
- setting aside a portion of existing energy efficiency funding for Indian tribes;
- setting aside a portion of existing weatherization funding for Indian tribes;
- streamlining environmental reviews on Indian lands by providing tribes with "treatment as a sovereign" status under the National Environmental Policy Act (NEPA);
- clarifying that Indian lands are not public lands and therefore are not subject to NEPA; and,
- preventing BLM's Hydraulic Fracturing Regulations, designed for public lands, from applying to Indian lands.

Through these legislative changes, Congress would greatly streamline energy permitting on Indian lands providing more revenues for tribal governments, on-reservation jobs and increased supplies of domestic energy resources. On our Reservation, a typical permit can take about 480 days to be processed-more than one year. The Tribe takes delays in the permitting process seriously because the number of permits approved is directly related to the revenues the Tribe has available to fund our government and provide services to our members.

The Tribe understands that oil and gas companies operating on the Reservation are currently limiting operations based on the number of permits the agencies are able to process. In particular, companies are limiting the number of drilling rigs they are willing to operate on the Reservation. Drilling rigs are expensive operations that move from site to site to drill new wells. Oil and gas companies often contract for the use of drilling rigs. Any time a drilling rig is not actively drilling a new well, it amounts to an unwanted expense. Consequently, oil and gas companies will only employ as many drilling rigs as permit processing will support. On our Reservation, the Tribe understands that some oil and gas companies who are currently using one drilling rig would increase their operations to three drilling rigs if permit processing could support this increase.

One example of this is the Anadarko Petroleum Corporation's operations on the Reservation. Anadarko reported that it needed 23 well locations approved per month in 2011 and beyond, but in 2010, their permits were approved at a rate of 1.7 per month. Anadarko informed the Tribe that unpredictable approvals of permits forces the company to alter its operational plans at the last minute and often results in the company temporarily moving its operations off the Reservation to state and private lands. With consistent and reliable permit approvals, the Tribe is hopeful additional drilling rigs will move on to tribal lands and increase the revenues available for the tribal government, our members, and our investments.

IV. Analysis of S. 2132, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2014

The Tribe supports S. 2132 and believes that it is a good start. S. 2132 would amend existing laws to provide tribes with improved opportunities to manage their own energy resources. However, S. 2132 only addresses a few areas of the law. Much more needs to be done to overcome barriers tribes face in Indian energy development and to put tribes on an equal playing field with state governments and other energy developers. In the rest of my testimony, I provide a section-by-section analysis of S. 2132's provisions.

A. Section 101. Indian Tribal Energy Resource Development

The Tribe supports the amendments proposed in Section 101, but, in at least one case, more is necessary. First, this section would require the Secretary to consult an Indian tribe when adopting or approving an oil and gas well-spacing program or plan on the Tribe's lands. This proposal was among the 32 legislative proposals submitted by the Tribe. For too long the BLM, on behalf of the Secretary, has approved well-spacing plans on Indian lands without involving tribes. Even worse,

BLM typically relies on well-spacing developed in State forums. Tribes should be involved in this decisionmaking process to ensure that Indian lands are being developed efficiently, that protected areas are avoided, and to ensure that tribes have every opportunity to work closely with their industry partners.

Second, Section 101 also extends important planning authority to the Secretary of the Interior. When the Energy Policy Act of 2005 was passed, two Indian energy offices were created—one in the DOI and one in the Department of Energy (DOE). The DOE office was provided specific authority to assist tribes in overall energy planning. The DOI office was not provided similar authority.

Both offices need this specific planning authority. Federal energy policy has long overlooked or ignored tribes. Today tribes are catching up quickly and need the same or similar federal assistance that states rely on to manage their energy resources. In addition, Congress must support this statutory authority with needed appropriations to help tribes overcome decades of neglect by federal energy policy makers.

Third, Section 101 would require the Secretary of Energy to develop regulations for a long-overdue Indian energy loan guarantee program that was originally authorized in 2005 but never implemented. The Tribe believes that developing regulations would go a long way toward implementing the program and ensuring needed appropriations from Congress, but more is needed.

The law also needed to be changed to actually require the Secretary of Energy to provide these loan guarantees. Current law only states that the Secretary "may" provide guarantees. Making the program mandatory would provide the Indian energy loan guarantee program with the same authority provided to the Title XVII loan guarantee program which was authorized at the same time for energy innovations. Under the Title XVII program, the law stated that the Secretary "shall" provide guarantees.

We need similar energy innovations on Indian lands and we need similar laws to require that they be implemented. The Tribe specifically included this recommendation among its 32 legislation proposals because financing expensive energy projects is one of the most significant barriers to Indian energy development. Providing tribes with the opportunity to secure government backed financing would promote tribal self-determination in the development of energy resources because tribes would have the opportunity to be the owners of their development companies rather than relying on others to develop tribal resources.

DOI currently manages a successful Indian loan guarantee program for tribal businesses, but it lacks the budget for more expensive energy projects. Tribes need the level of funding proposed by the DOE loan guarantee program to cover the investment needed for energy projects. With this level of funding tribes will be encouraged to be owners of their own energy projects and vast untapped tribal energy resources can be developed for the long-term benefit of tribal communities and the Nation's domestic energy supplies.

B. Section 102. Indian Tribal Energy Resource Regulation

The amendments in this section would extend DOI funding opportunities for energy surveys and inventories to a new entity called a "tribal energy development organization" that is defined elsewhere. The Tribe believes that it would be useful for tribal energy development organizations to be able to receive funding through this program. However, it is more important and would advance Indian self-determination for Congress to provide sufficient appropriations to fund Indian energy surveys and inventories in the first instance. Funding is needed to ensure that tribes can enter into energy development negotiations with sufficient information and thereby promote Indian energy development.

C. Section 103. Tribal Energy Resource Agreements

The Tribe supports the changes Section 103 would make to the existing Tribal Energy Resource Agreement (TERA) program. As you know, the TERA program generally provides a process for Indian tribes to apply and potentially gain authority to approve leases, business agreements, and rights-of-way for energy development or transmission on their lands without Secretarial review. Many of the proposed changes in Section 103 would make the existing TERA application process more certain by providing timelines, requiring the Secretary to act on a TERA or it is deemed approved, and making more specific the reasons the Secretary may disapprove a TERA application. These are needed changes. I understand that since the program was created in 2005, no tribe has applied for a TERA, in part, because of the lengthy and uncertain application process.

Section 103 would also expand some TERA authority to a new category of tribes. This new category would be tribes who have carried out a contract or compact under

the Indian Self- Determination and Education Assistance Act (ISDEAA) involving activities related to the management of tribal land for not less than three years and without a material auditing exception. This new category of tribes may exercise TERA authority when the other party to the lease is a "certified" tribal energy development organization that is majority-owned and controlled by the tribe, or the tribe and one or more other tribes.

The Tribe strongly supports this change to the TERA program. This change would provide tribes, with demonstrated experience, the authority to approve some of their own leases, business agreements, and rights-of-way without the delays inherent in Secretarial review and approval. The Tribe has long managed its own energy development, lands and natural and cultural resources. The Tribe's experience in these areas should be recognized by the Federal Government without the Tribe being forced to take the additional, extensive, and uncertain step of completing a TERA application.

This change also promotes tribal self-determination and local control over the development of tribal energy resources. Tribes would be encouraged to develop tribally owned energy companies to develop their resources because tribes could enter into leases and agreements with tribally owned businesses without Secretarial oversight. This change allows tribes to avoid understaffed and bureaucratic federal agencies and the permitting delays associated with those agencies. Instead, tribes would be free to develop their own processes for more efficiently reviewing and approving leases and agreements with tribally owned businesses.

The Tribe also strongly supports changes proposed in Section 103 that would require the Secretary to make funds available to tribes operating an approved TERA pursuant to annual funding agreements—similar to ISDEAA contracts. If the tribes are going to take over these responsibilities for the Federal Government, then the Federal Government must provide adequate funding to tribes. Although it is unclear how much funding would be available from the Secretary, any new opportunity for funding energy activities is a significant change.

In addition to any federal funding may become available, tribal self-determination in the area of energy development would be better advanced if Congress affirmed tribes' exclusive authority to tax activities on Indian lands. Managing the permitting of energy resources, not to mention the infrastructure needs, is an expensive undertaking for any government. Tribes need the same revenues that other governments rely on to oversee and provide the needed infrastructure for energy development.

Finally, the Tribe supports changes in Section 103 that would help to clarify the Secretary's trust responsibilities for leases and agreements negotiated pursuant to a TERA. The proposed changes use language that is similar to existing law for Indian Mineral Development Agreements 25 U.S.C. §§2101–08 (1982) (IMDA). The IMDA's explanation of the Secretary's trust responsibilities has stood the test of time and is an appropriate model for the Secretary's trust responsibilities pursuant to a TERA.

D. Section 104. Conforming Amendments

Section 104 expands the definition of "tribal energy development organizations" to include a greater variety of tribally owned business entities that can utilize the authorities provided to tribal energy development organizations. The Tribe supports this change. The Tribe agrees that it is important and will advance Indian energy development to specifically recognize and extend authorities to tribally owned business entities. In many cases, tribally owned business entities, as opposed to just tribal governments themselves, are needed for the practical and efficient development of resources.

E. Section 201. Issuance of Preliminary Permits or Licenses

The Tribe supports Section 201 which would provide tribes with the same preference that states and municipalities have over private applicants for hydroelectric preliminary permits or licenses. It is appropriate to extend this preference to Indian tribes because tribal governments have many of the same public water development needs as state and municipal governments.

However, subsection 201(b) "Applicability" is neither appropriate nor needed and should be deleted from S. 2132. This subsection would limit the tribal preference and is intended to protect previously issued preliminary permits and original licenses that had been accepted for filing. Subsection 201(b)(1) is not needed because the underlying law, 16 U.S.C. §800(a), already provides protection for previously issues preliminary permits. Section 800(a) provides that governments may only receive this preference "where no preliminary permit has been issued."

Subsection 201(b)(2) is also not an appropriate protection for original licenses that have been accepted for filing. Congress already provided a process for "competing" license applications at 16 U.S.C. § 808 and subsection 201(b)(2) should not attempt to override existing law. In Section 808, Congress encourages competition for licenses and provides standards to ensure the best development of public waterways. The proposed changes in subsection 201(b)(1) and (2) would limit competition and result in water projects that are not the best available for tribal and public waterways.

F. Section 202. Tribal Biomass Demonstration Project

The Tribe supports Section 202 and requests that these provisions be made permanent and available to many tribes rather than just a limited demonstration project. Section 202 would require the Secretary of Agriculture or the Secretary of the Interior to enter into long-term contracts with tribes to collect woody debris on federal lands for biomass energy production. Longer contract terms are needed to help finance and justify the investment in biomass energy generation facilities. The Tribe could utilize a longer-term contact to test development of biomass facilities and make use of National Forests that have been included within our Reservation.

G. Section 203. Weatherization Program

The Tribe supports the change proposed in Section 203, but thinks that it does not go far enough to make weatherization programs work in Indian Country. The Tribe requests that Section 203 be replaced with the weatherization proposal included among the Tribe's 32 legislative proposals. The Tribe's proposal includes a number of changes to the weatherization program so that it would work in Indian Country

Section 203 would provide tribes with the ability to apply for direct access to weatherization funding. This authority should have been provided long ago. Under current law, Indian tribes are supposed to receive federal weatherization funding through state programs funded by DOE. However, very little funding reaches Indian tribes, despite significant weatherization needs.

If a tribe wants to receive direct funding from the (Department of Energy) DOE, it must prove to DOE that it is not receiving funding that is equal to what the state is providing its non- Indian population. This arrangement is a violation of the government-to-government relationship between Indian tribes and the Federal Government, and the federal trust responsibility. DOE does not even track the weatherization needs of Indian tribes or the funding distributed to tribes. When former Senator Dorgan raised this issue with DOE in the 111th Congress, DOE reported that it had no idea how much weatherization funding was actually received by Indian tribes.

Over the years that the weatherization program has been in existence, tribes have missed out on millions in funding. Each year the weatherization program is funded at around $50 million per year, and under the American Reinvestment and Recovery Act of 2009 $4 billion was provided for weatherization needs. This funding is intended for low-income households and should go to those who need it most. On Indian reservations poverty rates are 2 to 3 times higher than national averages.

Section 203 should include additional changes to the weatherization program otherwise Indian tribes will still not be able to utilize the funding. As written, Section 203 requires tribes to comply with the same standards as state governments who have been receiving weatherization assistance for decades. This puts the burden on tribes to overcome decades of neglect by the Federal Government for energy use and management on Indian reservations. Without standards and training that are appropriate to Indian country, many Indian tribes will still not be able to utilize this funding opportunity. Section 203 should include reporting standards that make sense in Indian country and provide for training of energy auditors to serve Indian reservations.

H. Section 204. Appraisals

The Ute Tribe supports streamlining the appraisal process and providing tribes options for obtaining appraisals. Interior agencies involved in energy development are already understaffed. Indian tribes and the Interior should be able to rely on appraisals conducted by the tribe itself or certified, third party appraisers.

I. Section 205. Leases of Restricted Lands for Navajo Nation

This section provides that the Navajo Nation may submit regulations governing mineral leases for approval by the Secretary, and, once approved, would provide the Navajo Nation with the authority to approve mineral leases without subsequent review and approval by the Secretary. The Ute Tribe supports providing tribes with independent authority to approve mineral leases and believes this section should be

expanded to include all tribes who submit mineral leasing regulations for approval to the Secretary.

V. Conclusion

S. 2132 is a good start, but much more is needed to support and promote Indian energy development. Indian energy resources have the potential to provide many tribes and their members with long-term financial security and on-reservation jobs as well as increased domestic energy resources. However, to reach these goals, Congress and the Administration must improve and coordinate Indian energy permitting, provide tribes with access to federal energy programs, and clarify tribal authorities to provide the resources necessary to support Indian energy development.

I would like to thank Chairman Tester, Vice Chairman Barrasso and members of the Committee for the opportunity to present this testimony on behalf of the Ute Indian Tribe. The Tribe stands ready to work with the Committee to find ways to eliminate barriers to Indian energy development. The current barriers have a direct effect on the Tribe's revenues, our ability to invest in the future, and the services we are able to provide our members, our children and grandchildren.

Attachment 1

UINTAH AND OURAY
TRIBAL BUSINESS COMMITTEE

Resolution No. _____

WHEREAS: The Tribal Business Committee (Business Committee) of the Ute Indian Tribe of the Uintah and Ouray Reservation (Tribe) is empowered by Article VI, Sections 1(c) and 1(f) of the Constitution and By-Laws of the Tribe to regulate the economic affairs of the Tribe; and

WHEREAS: Business Committee is seeking a new office to increase Bureau of Indian Affairs (BIA) capacity and expertise for energy permitting; and

WHEREAS: On its own and as a part of the Coalition of Large Tribes (COLT), the Business Committee has supported a few proposals in recent years, including, (1) creating a new BIA Regional Office for energy producing tribes, (2) reorganizing the Office of Indian Energy and Economic Development's (OIEED) Division of Energy and Minerals Development in Denver, Colorado into an Indian energy technical and permitting office, and, (3) passing legislation to create Indian Energy Development Offices in areas of high demand for energy permits; and

WHEREAS: While each proposal is a little different, they all seek to increase BIA staff and expertise for energy permitting and provide support to BIA Regional and Agency Offices; and

WHEREAS: These proposals include "one-stop shop" ideas and concepts that would bring various agencies together in a single location to improve communication and coordination between the various agencies involved in energy permitting; and

WHEREAS: The Indian Energy Regulatory Office would be centrally located in Denver, Colorado and utilize and refocus the existing resources and office space of the Office of Indian Energy and Economic Development's (OIEED) Division of Indian Energy and Mineral Development; and

WHEREAS: Establishing the Indian Energy Regulatory Office in Denver, Colorado provides adequate housing and ease of recruiting new employees to a major metropolitan area, and the proximity of other federal agencies involved in the energy permitting process; and

WHEREAS: The Indian Energy Regulatory Office would be established within the Secretary's Office, similar to the Indian Water Rights Office, to ensure that the Director of the Indian Energy Regulatory Office has authority over the various agencies involved; and

WHEREAS: The Indian Energy Regulatory Office would replace current BIA Regional Office authorities and responsibilities for energy producing Indian tribes, and would not result in duplicative approval; and

WHEREAS: The Indian Energy Regulatory Office would provide energy resource assessments and feasibility studies, technical assistance and training in energy development proposal review, increasing BIA permitting capacity and permit streamlining, support for permitting expertise within BIA Agency Offices, improved coordination with other agencies, technical assistance and training in the oversight and management of energy and financial resources; and

WHEREAS: Indian tribes seeking greater BIA support in the areas of energy development, oversight, management, proposal review and financial assistance could elect to be served by this Indian Energy Regulatory Office; and

WHEREAS: Existing BIA Regional Office would continue to provide Indian tribes utilizing the new Indian Energy Regulatory Office with support and oversight for all non-energy related issues; and

WHEREAS: In addition to improving BIA energy expertise, permitting and support provided to Indian tribes, this Indian Energy Regulatory Office would ultimately include staff from other Interior agencies and other Federal agencies involved in Indian energy permitting; and

WHEREAS: Interior and other Federal agencies that would be ultimately included in the Indian Energy Regulatory Office would include, Bureau of Land Management (BLM), Office of Mineral Evaluation (OME), Office of Natural Resources Revenue (ONRR), Bureau of Reclamation (BOR), Fish and Wildlife Service (FWS), Office of Special Trustee (OST), the Office of the Solicitor (SOL), the Environmental Protection Agency, the United States Department of Agriculture, and the Army Corps of Engineers; and

WHEREAS: Over time, the size and capacity the Indian Energy Permit Streamlining Office can be increased through additional federal funding, for example, based upon the testimony of the Ute Indian Tribe and other tribes, the House Appropriations Subcommittee on Interior, Environment and Related Agencies, is already considering additional funding for a new and refocused Indian energy office in Denver, Colorado; and

WHEREAS: Additional funding could be provided for the Indian Energy Permit Streamlining Office by redirecting BLM and other agency funding for oversight and management of energy resources, and transfer of BLM fees for oil and gas permit applications, well inspections and non-producing acreage to the Indian Energy Permit Streamlining Office; and

WHEREAS: Over time, additional Indian Energy Regulatory Offices could be established throughout Indian Country to provide increased regional support for Indian energy development.

WHEREAS: Ultimately, the Indian Energy Regulatory Office will:

- include BIA staff with expertise in energy permitting and environmental review,
- build expertise in Indian energy development with a focus on permit processing and eliminating permit backlogs,
- include or designate attorneys from SOL to provide legal support and review,
- as a new BIA Regional Office conduct its own reviews, while also providing support for BIA Agency and tribal review and evaluation of energy proposals, permits, mineral leases and rights-of-way, and Indian Mineral Development Agreements for final approval, conducting environmental reviews (including endangered species and cultural resources), and conducting surface monitoring,
- review and prepare Applications for Permits to Drill (APDs), Communitization Agreements and well spacing proposals for approval, provide production monitoring, inspection and enforcement, and oversee drainage issues,
- provide energy related technical advice to BIA Regional and Agency Offices,
- eliminate duplicative or inconsistent review of energy permits,
- provide flexibility in dealing with distinct phases of energy development from exploration, sale, permitting, monitoring, and verifying,
- develop best practices for BIA in the area of Indian energy development, including, standardizing energy development processes, procedures, and forms among BIA Regions and Agency Offices,
- support BIA Agency Offices in providing energy related outreach, support, technical assistance, mineral evaluation, and education to individual Indian surface and mineral owners,
- provide coordination and communication among Interior offices and bureaus involved in energy permitting including: BIA, BLM, OME, ONRR, BOR, FWS, OST and SOL; and

WHEREAS: The Indian Energy Regulatory Office would be staffed with existing OIEED Division of Energy and Mineral Development personnel and BIA personnel transferred or hired to fill specific positions; and

WHEREAS: Over time, additional BIA staff should be hired and transferred to provide energy expertise and permitting capacity. In addition, other Interior agencies involved in energy permitting, including: BLM, OME, ONRR, BOR, FWS, OST and SOL, should co-locate personnel to the Office to help streamline energy permitting; and

WHEREAS: As a starting point the Indian Energy Permit Streamlining Office should include the following positions:

- a Director responsible for Office operations and coordination and communication with other agencies;
- Administrative Support Staff;
- an Information Technology Specialist to interface all required information technology systems to communicate with the Office, maintain and troubleshoot systems, and train employees;
- BIA energy staff, including: two petroleum engineers, three realty specialists, two environmental specialists, and one archeologist or cultural resource specialist;
- at least two, BLM energy staff familiar with processing and approving APD's, conducting production monitoring, inspection and enforcement, and addressing drainage and other technical issues;
- two ONRR outreach specialists to track royalties, and provide information to tribes and allottees; and,
- two OST specialists to track payments, answer allottee questions, and conduct appraisals.

NOW, THEREFORE, BE IT RESOLVED, that the Business Committee at a duly called meeting, with a quorum present, intends to continue working with the Administration to develop an Indian Energy Regulatory Office as described in this resolution to will improve BIA and Interior support for Indian energy.

BE IT FURTHER RESOLVED, that the Business Committee also intends to pursue Congressional legislation, as attached to this resolution, to make an Indian Energy Regulatory Office permanent and to ultimately include other Federal agencies involved in Indian energy development.

BE IT FINALLY RESOLVED, that the Business Committee hereby authorizes and approves its Chairman or, in his absence, the Vice-Chairman, to execute any and all documents as may be necessary and appropriate to carry out the terms, conditions and intent of this Resolution.

Gordon Howell, Chairman

Ron Wopsock, Vice-Chairman

Bruce Ignacio, Member

Stewart Pike, Member

Phillip Chamburas, Member

Tony Small, Member

CERTIFICATION

I HEREBY CERTIFY THAT THE FOREGOING Resolution was adopted by the Tribal Business Committee of the Ute Indian Tribe of the Uintah and Ouray Reservation pursuant to the Constitution and By-Laws of the Ute Indian Tribe of the Uintah and Ouray Reservation at a duly called meeting in Ft.Duchesne, Utah, on the 29 day of April, 2014, at which time a quorum was present and votes 6 for, 0 against, 0 abstaining and 0 absent.

Tribal Business Committee - Secretary
Ute Indian Tribe, Uintah & Ouray Reservation

Proposed Legislative Language for Indian Energy Permit Streamlining Office

Attached to Business Committee Resolution No. _____

Section 2602(a) of the Energy Policy Act of 1992 (25 U.S.C. 3502(a)) is amended—

(1) by redesignating paragraph (3) as paragraph (4);

(2) by inserting after paragraph (2) the following:

"(3) INDIAN ENERGY REGULATORY OFFICE.—

"(A) ESTABLISHMENT.—To assist the Secretary in carrying out the Program, the Secretary shall establish an 'Indian Energy Regulatory Office' within the Secretary's Office to be located in Denver, Colorado. The Office shall utilize the existing resources of the Department's Office of Indian Energy and Economic Development Division of Indian Energy and Mineral Development.

"(B) DIRECTOR.— The Office shall be led by a Director who shall be compensated at a rate equal to that of level IV of the Executive Schedule under section 5315 of title 5, United States Code and who shall report directly to the Deputy Secretary.

"(C) FUNCTIONS.—The Office shall serve as a new Bureau of Indian Affairs (BIA) Regional Office that energy producing Indian tribes may voluntarily select to replace an Indian tribe's existing BIA Regional Office for the following functions:

(i) notwithstanding any other law, oversee, coordinate, process and approve all Federal leases, easements, right-of-ways, permits, policies, environmental reviews, and any other authorities related to energy development on Indian lands.

(ii) support BIA Agency Office and tribal review and evaluation of energy proposals, permits, mineral leases and rights-of-way, and Indian Mineral Development Agreements for final approval, conducting environmental reviews, and conducting surface monitoring;

(iii) review and prepare Applications for Permits to Drill, Communitization Agreements and well spacing proposals for approval, provide production monitoring, inspection and enforcement, and oversee drainage issues;

(iv)provide energy related technical assistance and financial management training to to BIA Agency Offices and tribal;

(v) develop best practices in the area of Indian energy development, including, standardizing energy development processes, procedures, and forms among BIA Regions and Agency Offices;

(vi)minimize delays and obstacles to Indian energy development and,

(vii)provide technical assistance to Indian tribes in the areas of energy related engineering, environmental analysis, management and oversight of energy development, assessment of energy development resources, proposals and financing, development of conventional and renewable energy resources.

"(D) RELATIONSHIP TO BUREAU OF INDIAN AFFAIRS REGIONAL AND AGENCY OFFICES.—

(i) The Office shall have the authority to review and approve all energy related matters without subsequent or duplicative review and approval by other BIA Regional Offices. Existing BIA Regional Offices shall continue to oversee, support and provide approvals for all other non-energy related matters.

(ii) BIA Agency offices and BLM State and Field offices shall continue to provide regional and local services related to Indian energy development including, local realty functions, on-site evaluations and inspections, direct services as requested by Indian tribes and individual Indian and any other local functions to related to energy development on Indian lands.

(iii) The Office shall provide technical assistance and support to the BIA and BLM in all areas related to energy development on Indian lands.

"(E) DESIGNATION OF INTERIOR STAFF.—The Secretary shall designate existing staff and resources of the Division of Energy and Mineral Development, and other Interior staff and resources to the Office, including: Bureau of Land Management, Office of Mineral Evaluation, Office of Natural Resources Revenue, Bureau of Reclamation, Fish and Wildlife Service, Office of Special Trustee, and the Office of the Solicitor to provide for the review, processing and approval of:

(i) permits and regulatory matters under the Indian Mineral Leasing Act of 1938 (25 U.S.C. §§ 396a *et seq.*), the Indian Mineral Development Act of 1982 (25 U.S.C. §§ 2101 *et seq.*), the Indian Tribal Energy Development and Self-Determination Act, included as Title V of the Energy Policy Act of 2005 (25 U.S.C. §§ 3501 *et seq.*), the Indian Right-Of-Way Act of 1948 (25 U.S.C. § 323 to 328) and its implementing regulations at 25 C.F.R. Part 169, leasing provisions of 25 U.S.C. 415, and surface leasing regulations at 25 C.F.R. Part 162;

(ii) the consultations and preparation of biological opinions under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) (ESA);

(iii) the preparation of analyses under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA); and,

(iv) providing technical assistance and training in various forms of energy development on Indian lands.

"(F) MANAGEMENT OF INDIAN LANDS.— The Director shall ensure that all environmental reviews and permitting decisions comply with the United States' unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions, and are exercised in a manner that promotes tribal authority over Indian lands consistent with the federal policy of Indian Self-Determination. The Director shall also ensure that Indian lands shall not be considered to be Federal public lands, part of the public domain or managed according to federal public land laws and policies.

"(G) TRANSFER OF FUNDS.—To establish the Office and advance these efforts, the

Secretary shall authorize, for a period of not to exceed two years, the expenditure or transfer of such funds as are necessary from the annual budgets of:

(i) the Bureau of Indian Affairs;
(ii) the United States Fish and Wildlife Service;
(iii)the Bureau Land Management;
(iv)the Office of Natural Resources Revenue; and,
(v) the Office of Mineral Valuation.

"(H) BASE BUDGET.—Following the two year periods described in (G) above, the combined total of the funds transferred pursuant to those provisions shall serve the base budget for the Office.

"(I) APPROPRIATIONS OFFSET.—All fees generated from Applications for Permits to Drill, inspection, nonproducing acreage, or any other fees related to energy development on Indian Lands shall, commencing on the date the Office is opened, be transferred to the budget of the Office and may be utilized to advance or fulfill any of its stated duties and purposes.

"(J) REPORT.—The Office shall keep detailed records documenting its activities and submit an annual report to Congress detailing, among others:
(i) the number and type of federal approvals granted;
(ii) the time it has taken to process each type of application;
(iii)the need for additional similar offices to be located in other regions; and,
(iv)proposed changes in existing law to facilitate the development of energy resources on Indian lands, improve oversight of energy development on Indian lands.

"(K) APPROPRIATIONS OFFSET.—All fees generated from Applications for Permits to Drill, inspection, nonproducing acreage, or any other fees related to energy development on Indian Lands shall, commencing on the date the Office is opened, be transferred to the budget of the Office and may be utilized to advance or fulfill any of its stated duties and purposes.

"(L) COORDINATION WITH ADDITIONAL FEDERAL AGENCIES.—Within three years of establishing the Office, he Secretary shall enter into a memorandum of understanding for the purposes coordinating and streamlining energy related permits with—
(i) the Administrator of the Environmental Protection Agency;
(ii) the Assistant Secretary of the Army (Civil Works); and,
(iii)the Secretary of Agriculture.

Attachment 2:

No-Cost Amendments to S. 2132

- **Delayed Royalties Due to Communitization Agreements.** Where feasible, BIA and BLM should require Communitization Agreements (CA) to be submitted at the time an Application for Permit to Drill is filed. This is possible where the oil and gas resource is well known. When this is not feasible, BLM should require that royalty payments from producing wells be paid within 30 days from the first month of production into an interest earning escrow account.

- **Minor Source Regulation in Indian Country.** Require the Environmental Protection Agency to delay implementation of its new synthetic minor source rule for two years to ensure appropriate staffing is in place to administer any new permitting requirements. (The EPA has requested comments on delaying the Tribal NSR Minor Source permitting requirement; EPA has yet to make an announcement concerning the delay.)

- **Tribal Jurisdiction Over Right-of-Ways.** Tribal jurisdiction over some right-of-ways has been limited by federal courts. Legislation should clarify that Indian tribes retain their inherent sovereign authority and jurisdiction for any right-of-ways across Indian lands. As tribes take greater control over their energy resources, uncertainties regarding jurisdiction should be clarified.

- **Need for Tax Revenues.** Because federal courts have allowed state governments to tax energy development on Indian lands, tribes are unable to impose their own taxes or can only impose partial taxes. Without tax revenues, tribal infrastructure, law enforcement, and social services cannot keep up with the burdens imposed by increased energy development. Consequently, tribal governments are faced with a huge cost burden and become more dependent on federal funding. As Congress promotes greater tribal control of energy development, Congress must also clarify the law to ensure that tribes can raise revenue through taxes.

- **Limited TERA Revisions.** S. 2132 includes language that would "deem approved" a TERA application if DOI does not respond to a tribal applicant within a defined time period. Unfortunately, in other areas, DOI is known to disapprove an application on the last day and require tribes to revise the same application multiple times. The Committee should include in S. 2132's TERA amendments a one-revision limit on a TERA application. If DOI requires any additional changes, DOI should have to show cause for why such changes were not requested the first time, and tribes should be able to appeal any DOI requests to revise the same application multiple times.

- **Tribal Energy Efficiency.** Despite a longstanding state program, there are no ongoing programs to support tribal energy efficiency efforts. The Department of Energy (DOE) should allocate not less than 5 percent of existing state energy efficiency funding to establish a grant program for Indian tribes interested in conducting energy efficiency activities for their lands and buildings.

- **Weatherization Improvements.** S. 2132 includes a section that will allow tribes to directly access DOE weatherization funding. This section also leaves it up the Secretary to make a determination that the low-income members of the Indian tribe would be equally or better served by making a grant directly to the Tribe rather than to the State in which the low-income members reside. There is no indication as to what criteria the Secretary may use. Any discretion should be taken out and funding should be set-aside to make grants to tribes who request such funding for weatherization improvements and provide training for additional energy auditors in Indian Country.

- **Environmental Review of Energy Project on Indian Lands.** Environmental review of energy projects on tribal land is more extensive than on comparable private lands. This extensive review acts as a disincentive to development on tribal lands. In addition, federal agencies typically lack the staff and resources to expeditiously review a project. Similar to the Clean Water Act, Clean Air Act and others, amend the National Environmental Policy Act (NEPA) to include treatment as a sovereign (TAS) provisions. The new provision would allow a tribe to submit an application to the Council on Environmental Quality and once approved, federal authority for completing environmental reviews would be delegated to tribal governments.

- **Clarify that Indian Lands are not Public Lands Subject to NEPA.** The 10th Circuit Court of Appeals, in *Davis v. Morton*, 469 F.2d 593 (1972), equated Indian trust land to public lands and thus treats leases on Indian trust land as a major federal action subject to NEPA. The Court stated that exempting Indian lands from NEPA "would preclude all federal lands from NEPA jurisdiction, something clearly not intended by Congress in passing the Act." Davis supports a sweeping interpretation of NEPA's application in Indian country and questions the fundamental differences between Indian lands and public lands. Clarify that Indian lands are not "public trust lands" held in trust for the people of the United States. Indian lands are held in trust or restricted status for the use and benefit of the Indian tribes and its members. All other "federal lands" are still subject to NEPA.

- **BLM Hydraulic Fracturing Regulations.** The BLM has proposed hydraulic fracturing regulations using Federal Land Policy and Management Act standards and applying those regulations to Indian lands. The Committee should include in the bill language similar to that used in H.R. 1548 to limit the BLM's regulation of hydraulic fracturing on Indian Lands. H.R. 1548 – "Prohibits any Department of the Interior rule regarding hydraulic fracturing, used in oil and gas development or production, from having any effect on land held in trust or restricted status for Indians, except with the express consent of its Indian beneficiaries."

○